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Getting Started

Background Information

The House Select Committee on Vendor Contracting initiated legislation in 1998 to study current state social service contracting practices after concerns were raised about misuse of funds by nonprofit entities. The legislation directed the Office of Financial Management (OFM) to convene a nine-member Task Force on Agency Vendor Contracting Practices and provide recommendations to the Legislature by November 1999.

After review of the Task Force report by the Legislature, OFM was authorized in July 2000 to implement some of the recommendations of the Task Force. Publishing client service contract guidelines was one of the key recommendations the Legislature chose to implement.

Intent

Client service contracts can be complex, so effective and efficient contract management is critical.

Today's delivery of client services often involves complex partnerships among public, private, and nonprofit organizations. For example, a particular program may use a combination of federal, state, and local government financial and non-financial resources. In addition, client service contracts represent a significant portion of the state's contract expenditures. It is imperative, therefore, that state agencies utilize an effective, efficient approach to client service contracting. The intent of this "Guide to Client Service Contracting" is to recognize such realities and provide a resource for state agency staff to use to promote effective client service contract management and accountability for the public funds entrusted to them.

In 2003, RCW 39.29 was amended to require agencies to follow these guidelines. Any deviation from the process described in the Guide should be well documented.

The guidelines should be used as a tool for state agency staff involved in the administration, management and oversight of client service contracts as defined in the next section. For the purpose of these guidelines, the term "contract managers" will be used to mean any staff involved in the contracting process (e.g. contract specialists, program managers, state agency executives, etc.). The words "contract", "agreement", and "memorandum of understanding" will be considered synonymous.

Who Is a Client?

Client services are defined in RCW 39.29.006(2) as: services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

The legislative intent is that clients are individuals who the agency has statutory responsibility to serve, protect or oversee. Clients are members of the public, external to state government, who have social, physical, medical, economic or educational needs. These individuals may require government assistance to meet their needs.

For example:

- Clients of the Department of Social and Health Services include nursing home patients, institutionalized individuals or children in need of therapy;
- Clients of the Employment Security Department include unemployed, displaced workers, and veterans;
- Clients of the Department of Health include children who need vaccinations;
- Clients of the Department of Veterans Affairs include disabled veterans and widows of veterans;
- Clients of the Department of Community, Trade and Economic Development include homeless individuals and crime victims; and
- Clients of the Office of Superintendent of Public Instruction include K-12 public school students. Similarly, students at the state's institutions of higher education are their clients.

In accordance with the definition in statute above, the contractor must provide **direct** services to agency clients for the contracts to be classified as client service contracts. Direct service means the contractor is in direct contact with individual clients as part of providing the client service.

Contracts for development of programs or media campaigns which will ultimately benefit the client, but which, under the contract scope, do not currently provide a direct service to the client, are not considered client service contracts. For example, development of a training curriculum that would ultimately be offered to clients is not a client service contract. The contract that provides the training to the client is the client service contract.

For some state agencies, where identifying clients is more difficult, it may help to review the agency's implementing statute in the Revised Code of Washington where the mission and duties of the agency are set forth.

Typically, clients are not considered to be:

- Providers of services (for example, if a state agency contracts with a trainer to provide training to contractors of counseling services, the contract with the trainer is not client services).
- State agency staff (state agencies that only serve other state agency staff do not have any client service contracts).
- Businesses (when state agencies are contracting to assist businesses to increase business opportunity and earn more money, those services are not considered to be client services).

Other Types of Contracts

Correct classification of the type of contract is important because different rules apply to different types of contracts.

Client service contracts, which respond to the needs of an often-vulnerable clientele, are not subject to the same competitive procurement and filing requirements as other types of state contracts.

Therefore, this document does not include personal services, purchased services and interagency/intergovernmental contracts, as follows:

- **Personal Services** are professional or technical services provided by a consultant to accomplish a specific study, project, task or other work statement. These contracts are governed by RCW 39.29, which includes specific requirements regarding competitive solicitation, filing, and reporting of contracts to the Office of Financial Management. For more information on these contracts, the *Guide to Personal Service Contracting* is available online at: <http://www.ofm.wa.gov/contracts/psc/psctoc.htm>.
- **Purchased Services** are services provided by a vendor to accomplish routine, continuing and necessary functions. These services tend to be more repetitive and mechanical in nature with the contractor following established or standardized procedures. Purchased services are under the statutory authority of the Department of General Administration, Office of State Procurement (OSP), the Department of Information Services (DIS), and the Information Services Board (ISB). For guidelines on purchased service contracts governed by RCW 43.19, the current OSP Purchasing Manual document is available at <http://www.ga.wa.gov/pca/regulat.htm>.

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Purchased service contracts for information technology are governed by RCW 43.105 and are covered under the current DIS Information Technology Investment Standards document available at <http://www.wa.gov/dis/index.htm>.

- **Interagency/Intergovernmental Agreements**, defined in RCW 39.34, are contracts between any agency, political subdivision or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. These contracts also do not require competitive solicitation.

Agencies may also have other types of agreements or applications that are not defined as client service contracts and thus would not be included in the scope of these guidelines.

Questions about these Guidelines

Questions about client service contracts should be directed to your agency contracting staff. For further clarification or to provide suggestions on these guidelines, contact the Office of Financial Management, at ofm.contracting@ofm.wa.gov. The guidelines will be updated as needed by the Office of Financial Management. These guidelines are also located electronically on the Office of Financial Management website at the following: <http://www.ofm.wa.gov>.

Guiding Principles

Accountability

Contract managers are accountable for ensuring that cost-effective, quality services are provided to agency clients by contractors. Responsibility for contract management and monitoring should be assigned to specific state staff. Contractors entrusted with handling public resources are also accountable for using those resources efficiently, economically, and effectively.

Fiscal Responsibility

Contract managers are responsible for ensuring that public funds are handled properly and in compliance with laws and regulations.

Compliance

Contract managers entrusted with public resources are responsible for complying with applicable laws and regulations. That responsibility includes identifying the requirements with which the state agency and contractor must comply and implementing systems designed to achieve compliance.

Collaboration

Delivery of client services is often a collaborative effort between the state, contractors, and other agencies.

Qualified Contractors

Contract managers need to employ flexible business practices to encourage the participation of qualified contractors who can provide timely, quality client services and meet fiscal management expectations.

Subject Matter Consultation

Contracts are often complex financial transactions requiring specific expertise in many areas. Contract managers are encouraged to consult with both internal and external “subject matter experts” to gain further information about specific topics of the client service contracting process, such as accounting or auditing.

Oversight

Contract managers are responsible for monitoring contractor performance to ensure compliance with funding and contract requirements, and to take action in the event of noncompliance.

Leadership and Guidance

Contract managers should provide leadership, policy direction, training and/or technical support to agency and contractor staff as needed to ensure effective and efficient management of client service contracts. State agencies should continually assess whether the contract management process remains effective and efficient.



CHAPTER 1

Contract Management

Contract Management means any activity related to contracting for client services, including the decision to contract, contractor screening, contractor selection, contract preparation, contract monitoring, auditing, and post-contract follow up.

1.1 Purpose

Proactive contract management is important to achieve quality results.

The purpose of contract management is to:

- Ensure delivery of timely, quality services to agency clients;
- Ensure the contractor is in compliance with the terms and conditions of the contract;
- Ensure accountability of public funds in accordance with applicable laws, regulations, and contract provisions; and
- Promote and protect the public interest.

The specific nature and extent of contract management varies from contract to contract and should be tailored to the type of contract and contractor involved. Factors which may influence the approach to contract management include: the complexity and sensitivity of the services to be provided; the level of funding; number and types of funding sources; subrecipient versus vendor status for federally funded contracts; experience of the contracting parties; and contractor prior performance.

1.2 Responsibilities

The responsibility for contract management may be assigned to a specific individual or carried out by a team that has the necessary program and fiscal expertise and authority to assess service quality and ensure compliance with contract provisions. Performance expectations of contract managers should be clearly defined.

Responsibilities of the contract manager could include:

- Understanding the contract, including the specific contract obligations and performance indicators by which performance will be monitored;
- Identifying the extent and source of other public funding the contractor is using to fund services provided by the contract;
- Ensuring the contractor has a clear understanding of how the contract will be managed and monitored;

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- Providing the contractor with guidance, technical assistance, and training, as needed, to promote effective contract performance;
- Using a risk assessment approach when contracting out services and selecting contractors, and determining the extent of monitoring and auditing of the contractor and individual contracts;
- Monitoring the contractor's activities to ensure quality service delivery, and appropriate use of funding for authorized purposes. This includes maintaining contract documentation;
- Collaborating with other state agencies relying on the same contractor for client service delivery to ensure clarity of program service delivery requirements and clear expectations for the overall funding of the contractor's operation and the handling of specific funding sources;
- Reviewing invoices and verifying the delivery of services prior to payment by the agency;
- Resolving issues or problems that arise during the contract;
- Measuring and tracking agency and client satisfaction with contractor performance;
- Sharing contractor performance information with other state agencies;
- Complying with federal and state rules and regulations pertaining to contract management;
- Documenting the contracting process (see [Appendix G](#) for examples of contract documentation forms); and
- Continually assessing the state agency methodology for contract management to assure it remains applicable and functional.

1.3 State Agency Staff Qualifications

Contract managers are responsible for managing client service contracts from the beginning to the end of the contract cycle. The individuals or combination of individuals managing these contracts should have the knowledge, skills, and abilities to carry out their responsibilities.

To properly administer contracts, expertise is needed in contract law, contract drafting, and contract management and monitoring. It is also helpful if contracting staff have program experience in the program for which they are drafting or monitoring contracts. Whenever possible, staff should have the appropriate experience and training to properly manage client service contracts.

1.4 Contract Manager “Don’ts”

Among the multiplicity of responsibilities contract managers have, they need to be mindful of the following:

- Don’t instruct the contractor to begin work before the contract is executed and approved;
- Don’t change the Description, Scope of Work, Period of Performance or Maximum Dollar Amount of the contract without processing a written amendment;
- Don’t direct the contractor to do work that is not specifically described in the contract;
- Don’t sign any contractor’s contract form without legal review;
- Don’t authorize payment to the contractor for any work not performed satisfactorily;
- Don’t pay for the same or similar services for the same client more than once; and
- Don’t set deliverable due dates before the start date of the contract or on or after the end date of the contract.

1.5 Ethics

State employees contracting on behalf of the state are to maintain strict ethical standards and take caution to avoid any real or apparent conflict of interest situations. Chapter 42.52 RCW, "Ethics in Public Service," effective January 1, 1995, applies to all state employees in all three branches of state government.

The ethics law is designed to protect state employees from conflicts of interest or from engaging in activities where their interests or loyalties could be divided or may be questioned. Employees should familiarize themselves with the applicable statutes and all agency policies whenever they are involved in any purchases on behalf of the state.

Specific ethics prohibitions that can affect employees when contracting are:

- Having a personal or financial interest that is in conflict with the proper discharge of state duties, including the transaction of state business with an entity in which a state employee has an interest;
- Assisting other persons in transactions with the state when a matter has been within his/her official responsibility within the preceding two years;

- Disclosing confidential information, for personal benefit or gain or for the benefit or gain of others;
- Accepting employment that might reasonably require the disclosure of confidential information obtained through state employment;
- Using one's official state position to obtain special privileges or exemptions or to grant special privileges to others;
- Accepting outside employment or compensation if circumstances would lead a reasonable person to believe it is a reward for performance or non-performance of state duties; and
- Accepting any gift, if circumstances create the impression that one's vote, judgment or action could be affected or that staff are being rewarded for the performance or nonperformance of an official duty or if the item is of a value that exceeds statutory limits.

Separate ethics boards are established for the legislative and executive branches with authority to educate, render advisory opinions, investigate, conduct hearings, issue subpoenas, seek judicial enforcement of subpoenas, conduct hearings, impose penalties, and recommend suspension and dismissal of violators. Agencies should contact their Assistant Attorney General or the appropriate ethics board for further information on the ethics law.

1.6 Collaboration/Communication

Collaboration and communication between contract managers and contractors is key to a successful contract. Having a good professional relationship with contractors allows for better decision making, better problem solving, and better contract management in general. Contract managers should be mindful of ethical considerations, while maintaining working relationships with contractors.

Communication can occur using many tools, such as the telephone, email, regular mail, and meetings, but should occur throughout the contract process. Contract managers may want to provide training, technical assistance, written documents, and other resources to assist contractors in successfully meeting the terms and conditions of the contract and in providing quality services to clients.

Collaboration, coordination, and communication are also beneficial between contract managers at different state agencies who are using the same contractors.

Discussions could include topics such as: similarities in scope of services, funding sources, how to avoid duplicate payments across state agencies, and collaboration on monitoring or auditing visits.

One tool state agency staff may use to improve collaboration and coordination is the [Client Service Contracts Database](#) (CSCD) developed by OFM in conjunction with state agencies. This database pulls basic client service contracts data from state agencies into a centralized location. State agency staff may access the CSCD to view other agencies' client service contract information and to determine if other agencies are using the same contractors.

The CSCD can be found on the OFM website, and is available to state agency staff through the statewide intranet by going to the following address: <http://cscd.ofm.wa.gov/cscd/User/Login.asp>.

1.7 Training on Client Service Contracts

Training on client service contracts is required for those who execute or manage client service contracts. Those who have not completed contract training cannot execute or manage these contracts until they have completed the training. Based on legislative concerns about the state's contracting practices, the 2002 Washington State Legislature passed Senate Bill 5629, codified as RCW 39.29.120, which mandated the contract training requirement effective January 1, 2004.

The OFM Contract Office offers ongoing and special contract training classes so staff can meet these requirements. The class schedule for each quarter is available online at the OFM webpage at the following: <http://www.ofm.wa.gov/training.htm>. For information regarding an agency-specific class, call (360) 725-5259 or email ofm.contracting@ofm.wa.gov.

The OFM training covers the topics in this *Guide to Client Service Contracting*. Those who have taken OFM's half-day or full-day client service contract training since January 2001, have satisfied the requirement. OFM maintains records of those who attended training since that date.

Contract training is mandatory before an employee manages or executes a client service contract.

Staff who execute contracts are those who sign contracts. Staff who manage contracts are those who have responsibility for the day-to-day activities involved in contracting. These activities may include providing technical assistance to contractors, monitoring contractor activities, and reviewing and approving invoices.

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Managers who execute but don't manage contracts may satisfy this requirement by attending the *Contracting for Mid-Level Managers* training or the *Contract Training for the Executive Manager* offered by OFM or equivalent training approved in writing by OFM.

Agencies may provide their own client service contract training and are encouraged to do so. However, the course must be approved in writing in advance by OFM. If agencies provide training, names of staff who attended the training must be reported to OFM.

Any request for an employee to be exempt from this training requirement must be submitted to OFM in writing. OFM must grant approval to the agency prior to the employee executing or managing contracts. The exemption is to be considered a temporary waiver only for an individual. The employee granted the exemption must attend contract training as soon as feasible. Multiple requests for exemption for an individual will not be approved. State agencies are responsible to ensure that individuals attend the training after receiving the waiver.

1.8 Risk-Based Audits

RCW 39.29.120 requires OFM to conduct risk-based audits of the client service and personal service contracting practices of state agencies to ensure agency compliance with the *Guide to Client Service Contracting* and the [Guide to Personal Service Contracting](#). OFM selects the agencies and conducts the audits, based on funding provided. The audit results are forwarded to the Governor, the appropriate standing committees of the Legislature, and the Joint Legislative Audit and Review Committee.

1.9 Risk Assessment Approach to Contract Management

Risk assessments should be completed in the pre-contract planning stage.

Risk assessment is the process of evaluating exposure to harm or loss that could arise from an activity associated with the client service contract. It consists of identifying and classifying risks based on certain characteristics, and measuring and evaluating the consequences of those risks.

Contract managers should conduct a risk assessment throughout the contracting process, including when:

- Deciding to contract out services and selecting contractors (pre-contract planning phase);
- Prioritizing contracts for monitoring and/or auditing purposes; and
- Determining the level of monitoring and/or auditing needed, in targeting efforts to areas of greater risk.

CONTRACT MANAGEMENT

A risk assessment evaluates risk factors in order to determine contract language to include in the contract to mitigate risks and how much monitoring and/or auditing should be done.

The risk-based approach allows contract managers to better focus their oversight efforts on higher risk contracts. Risk assessments should be linked to monitoring plans so state agency staff can clearly demonstrate how they are addressing risks.

Examples of risk factors that may be considered are:

- The state agency's experience with the contractor;
- Contractor systems and controls;
- Changes in the contractor's operations or personnel; and
- The history of the client service program or service.

Risk factors can be broken out into two broad categories:

- 1) Risks associated with client service programs, and
- 2) Risks associated with client service contractors.

RISKS ASSOCIATED WITH CLIENT SERVICE PROGRAMS

Examples of factors that may be considered in assessing risk for client service programs include:

- **Program history** – Is it a new or long established program or service? Have any significant changes occurred?
- **Total funding** – Does this contract represent a significant portion of the total program funding?
- **Complexity** – Are program requirements simple or complex?
- **Client health and safety** – How vulnerable are the clients that the program serves?
- **Responsibility for key decisions** – Does the state agency, federal government or the contractor make decisions about eligibility and amount or type of service to be provided to a client? For federal funds, is the contractor a vendor or subrecipient?
- **Federal risk assessment** – Has the U.S. General Accounting Office and U.S. Office of Management and Budget identified the program as being high risk?
- **Payment method** – What type of payment method is used (e.g., cost reimbursement, fee for service, performance-based)? What experience does the state agency have with the method?

- **Competition** – Are contracts awarded on a competitive basis, which includes detailed evaluations of the service proposal, costs, and contractor qualifications or are they awarded on a sole source or non-competitive basis?
- **Monitoring methods** – Are the existing methods of monitoring effective for this program? Do these monitoring methods effectively mitigate the other types of possible risks?
- **Client choice** – Is the client choosing the contractor, as required by some federal programs?

RISKS ASSOCIATED WITH CLIENT SERVICE CONTRACTORS

Examples of factors that may be considered in assessing risk for client service contractors include:

- **Total funding that the contractor receives from the agency** – Is the amount of funding small or large? Does the contractor have many or few contracts with the state?
- **Multiple funding sources** – Is the contractor receiving funding from several sources for similar services? Are multiple funding sources involved and to what extent?
- **Collaboration** – Has the contractor promoted collaboration on service delivery and contract expectations between itself and all of its funding partners?
- **Length of time in business** – Has the contractor been in business for several years or is it a start-up client service provider?
- **Experience and past performance** – Does the contractor have contracts for similar services with other governmental entities? How extensive is the contractor's experience with the state for this type of service? What is their performance history?
- **Accreditation/licensure** – Are contractors subject to accreditation or licensure requirements?
- **Financial health and practices** – Is the contractor's financial condition good or poor? Does the contractor demonstrate sound financial practices? Is the contractor's financial record keeping system adequate for the number and complexity of funding sources being managed? Is the contractor's cost allocation methodology equitable?
- **Current and prior audit experience** – Has the contractor had weaknesses in internal control over federal or state programs?
- **Oversight exercised by funding agencies** - Have there been monitoring or other reviews by any funding agency that could indicate the degree of risk? Is the contractor proposing to operate under a

waiver from customary program and financial management requirements?

- **Board of directors** – If the contractor is a nonprofit organization, does the board take an active role in directing the organization, establishing management policies and procedures, and monitoring the organization's financial and programmatic performance? Is the board comprised of individuals who are unrelated? Do employees or ex-employees of the organization serve as board members?
- **Subcontracting** – Does the contractor subcontract key activities? Does the contractor have an effective monitoring function to oversee these subcontracts?
- **Organizational changes** – Has there been frequent turnover of contractor management, senior accounting staff or key program personnel? Has the contractor taken on any new services within the last 12 months? Has the contractor experienced a recent rapid growth or downsizing? Has the contractor experienced reorganization within the last 12 months? Has the contractor changed major subcontractors recently?
- **Management structure** – Is the organization centralized or decentralized? How much control does the organization have over decentralized functions?
- **Legal actions** – Have any lawsuits been filed against the contractor within the last 12 months?
- **Defaulted contracts** – Has the contractor defaulted on any of its contracts within the past five years? If so, what were the circumstances?

Remember to link the risk assessment to the contract monitoring plan.

Based on the results of the risk assessment, contract managers may decide whether it is advisable to contract for the services. If so, the contract manager will decide which contractor to select, and/or the scope, frequency, and methods of monitoring and/or auditing to use to ensure sufficient oversight, given the risks involved. Risk assessment results may also be used to devise more stringent controls and tighter contract language, when appropriate, to adequately monitor and/or audit the use of public funds.

Risk management strategies include transferring risk to the contractor, minimizing or mitigating the risk, eliminating the risk or sharing the risk with the contractor.

Contract managers may:

- Add clauses to the contract to address specific risk factors;
- Require contractors to provide proof of insurance;

- Develop and implement effective monitoring plans and contractor reporting requirements;
- Link payments to deliverables/performance measures; and
- Consider performance bond or liquidated damages.

It is also important to note that contract risk is dynamic. Therefore, the risk assessment should be updated periodically to provide a current record of risk factors associated with the contract. Risk assessments, linked to a monitoring plan should be documented. Contract managers may choose how to document this. Several examples of risk assessment tools currently used by agencies can be found in [Appendix A](#).

1.10 Annual Contract Procedures Report

RCW 39.29.110 requires state agencies that have awarded or amended client service contracts and personal service contracts during a calendar year to provide a report to OFM detailing the procedures the agency employed in entering into, renewing, and managing these contracts. The report shall apply to state agencies that have entered into or renewed (amended) personal service contracts between January 1, and December 31, of each year.

OFM will notify agencies of the information needed in the report to satisfy this requirement. The *Contract Procedures Report* is due to OFM by January 31, of each year.

The Contract Procedures Report is a new requirement, effective January 31, 2004.

The following items will be required as part of submitting the *Contract Procedures Report*.

- Contract Procedures. A copy of, or a web site link for, the agency's procedures on client service contracts. The same information is required for personal service contracts.

If an agency does not have internal contract procedures in place, but the agency utilizes the policies of the State Administrative and Accounting Manual, Sections 15.10, 15.20 and 15.30 for personal service contracts, and Section 16.10 for client services, those policies should be referenced.

- Contract Totals. The total number of and total dollar value of client service contracts awarded by the agency during the calendar year period of January through December. Contracts to be included in these totals are those in the amount of \$5,000 or more.



CHAPTER 2

Pre-Contract Planning

2.1 Defining the Need

In the initial stage of contracting for client services, contract managers should define the need for client services. Defining the need contributes to effective prioritization of the funding required, a common understanding within the agency of the need, and the identification of the nature of the work and the level of service required to meet the need. Defining the need also contributes to the determination of how performance and quality will be measured.

2.2 Deciding to Contract

Generally, state agencies responsible for client service delivery have a combination of both broad and specific authority to contract for these services. Contracting may also be mandated in the authorizing legislation for a specific program or service.

In deciding whether to contract for client services, the following may be considered:

- Does the state agency or program have the general or specific legal authority to contract for the services?
- Does the state agency have sufficiently qualified and available staff to provide the service to clients?
- Does the state agency have adequate resources to administer the contracting process throughout the contract cycle?
- Does contracting provide the greatest benefit to the state and/or the clients?
- Are qualified contractors available to provide the client service?
- Does contracting best serve the public interest?

2.2.1 Funding Availability

One of the most important considerations to be addressed in deciding to contract is the availability of sufficient funding to cover the cost of services. The funding must also be appropriate for the type of client service involved. Adequate funding based on in-house budget projections must be verified by the contract manager. If funding is inadequate or non-existent, a contract cannot be awarded.

When funding is available, the type of appropriation should be considered. For state agencies whose funds are appropriated for a fiscal year or biennial period, those funds cannot be disbursed for work performed in a subsequent period.

In addition to the identified costs associated with contracting for client services, contract managers should also consider overhead expenses, such as costs for staff involvement with contract development, contract management, monitoring and internal fiscal processes, training, legal review of the contract, and dispute resolution.

2.2.2 Cost/Benefit Analysis

Before awarding a client service contract, contract managers should assess the need for contracting versus the cost of obtaining the desired results. In order to complete a cost/benefit analysis, contract managers should determine what is expected from a contract to achieve the identified benefits.

Issues to consider include:

- What level of expertise is needed?
- When is the service required?
- How will the contractor's services meet the need?
- Where is the service to be delivered?
- What products, reports, etc., if any, are to be delivered?
- What level of contract management and oversight is necessary?

This cost/benefit analysis enables agency management to determine if a contract for client services is necessary and to identify the specific benefits that will be achieved.

The cost of contracting for services is dependent on a combination of factors such as:

- Scope and depth of services;
- Urgency for delivery;
- Level of expertise required;
- Availability of other qualified contractors;
- Reputation and professional stature of the contractor;
- Risk associated with the service; and
- Market rate for service.

Potential benefits of contracting for services may include:

- Savings to state government and taxpayers;
- Increase in services to clients;
- Expertise in areas not currently available; and
- Ability to meet geographic needs.

2.2.3 Available Public Resources

After the client service is defined, contract managers should determine the availability of qualified public resources before considering the use of contracted resources. Technical expertise may be available from a variety of sources, such as:

- Employees within the agency;
- Other state, federal or local agencies that provide similar services, have encountered similar needs or have similar functional responsibilities; or
- Other Washington State agencies with specialized expertise.

2.2.4 Legal Constraints to Contracting

Certain legal requirements should be carefully considered before contracting for client services, including whether state employees have traditionally performed the client service work, whether a contract would replace current classified employees (RCW 41.06.380) or whether there are any applicable collective bargaining agreements. In addition, effective July 1, 2005, RCW 41.06.142 allows for contracting of services customarily and historically provided by the state employees. The rules relating to this process should be carefully reviewed before contracting.

Contract managers should first review agency policy and procedures, then they may want to seek legal advice from the Office of the Attorney General regarding these or similar situations where legal requirements are uncertain.

2.2.5 Contracting with Current or Former State Employees

Evaluate whether the ethics rules apply to each contract.

Specific restrictions apply to contracting with current or former state employees. Agencies should familiarize themselves with the requirements of RCW 42.52 prior to entering into any type of contract. A brief summary of the restrictions follows and should be used as a guide. This summary is not a comprehensive explanation of all the requirements of the ethics law.

NOTE: These prohibitions apply to any type of service contracting with the state, not just client service contracting.

Current State Employees

Current state employees may contract with outside entities or with other state agencies when all of the following conditions apply:

- The contract is bona fide and actually performed;
- The performance or administration of a contract or grant is not within the course of the officers' or employees' official duties or under his/her official supervision;
- Applicable laws or rules governing outside employment for the state officer or state employee do not prohibit the performance of the contract or grant;
- The contract or grant is not performed for or compensated by any person from whom the officer or employee is prohibited from accepting a gift;
- The contract or grant is not expressly created or authorized by the officer or employee in his/her official capacity; and
- The contract or grant would not require unauthorized disclosure of confidential information.

Ethics Board Determination

If a current state employee enters into a contract with a state agency and the contract is competitively bid and the only bid received is from the state employee; or, if the contract is not competitively bid, the state employee must receive the prior approval of the appropriate ethics board prior to execution of the contract. If approved, the state employee must file the contract with the board within 30-days of contract approval.

Former State Employees

Contract Restriction: The contract restriction applies only to those state officers and state employees who were involved in the negotiation or administration of agency contracts. The restriction under RCW 42.52.080(1) prohibits a former state officer or state employee from accepting employment or receiving compensation from an employer if:

- The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that [the post-state] employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration; **and**,

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- Such a contract or contracts have a total value of more than ten thousand dollars; **and**,
- The duties of the employment with the [post-state] employer or the activities for which compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts.

A former state employee may not accept employment or compensation from an employer within one year of leaving state employment if for two years prior to leaving the state, the employee negotiated one or more state contracts with the prospective employer; the value of the contract or contracts was more than \$10,000; and duties for the new employer include implementing or fulfilling contracts negotiated or administered while a state employee.

Two-Year or Beneficial Interest Restriction: The two-year or beneficial interest restriction does not prohibit a former state officer or state employee from doing business with his or her former state agency for a period of two years. The restriction applies only to the acquisition of a beneficial interest in a contract or grant.

Under this provision, a former state officer or state employee may not: Within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

Continuing Restriction: Several of the post-state employment restrictions are continuing. That is, there is no statutorily defined time limit that determines when these restrictions end. There are continuing restrictions on the following activities by former state officers and state employees:

- Accepting an offer of [post-state] employment or receiving compensation from a [post-state] employer if the officer or employee knows or has reason to believe that the offer or employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during state employment.

- Accepting an offer of [post-state] employment or receiving compensation from an [post-state] employer if circumstances would lead a reasonable person to believe the offer has been made or compensation given, for the purpose of influencing the performance or nonperformance of a duty by the officer or employee during state employment.
- Participating, at any time subsequent to state employment, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment.

2.2.6 Independent Status of a Contractor

An essential criterion in the use of client services is the independent entrepreneurial relationship between the contractor and the agency. Agencies could potentially be subject to payment of fines by the Internal Revenue Service and the Social Security Administration, if a determination of "employee" status is made regarding the agency's contracts.

Federal employment tax regulations essentially convey that every individual is an employee, if under the usual common law rules the relationship between the individual and the person for whom services are performed is the legal relationship of employee/employer. To determine whether a worker is an independent contractor or an employee, one must examine the relationship between the worker and the state. All evidence of control and independence in this relationship should be considered. The facts that provide this evidence fall into three categories – Behavioral Control, Financial Control, and the Type of Relationship itself.

Behavioral Control covers facts that show whether the state has a right to direct and control how the work is done, through instructions, training or other means.

Financial Control covers facts that show whether the state has a right to control the business aspects of the worker's job. This includes, but is not limited to:

- The extent the worker has un-reimbursed business expenses;
- The extent of the worker's investment in the business;
- The extent the worker makes services available to the relevant market;
- How the business pays the worker; and
- The extent the worker can realize a profit or incur a loss.

Facts covered by *Type of Relationship* include, but are not limited to:

- Written contracts describing the relationship the parties intended to create;
- The extent the worker is available to perform service for other, similar businesses;
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay or sick pay; and
- The permanency of the relationship.

After consulting with your own agency staff, contract managers may want to consider consulting with the Office of the Attorney General or the OFM Accounting Division to ensure this determination is made correctly.

2.3 Fiscal Considerations

Agencies should get the best value in their contracts.

Contract managers should determine the appropriate method of compensation and billing prior to entering into a contract. It is recommended that agency staff consult with agency fiscal and auditing staff if there are questions regarding fiscal considerations of contracts.

2.3.1 General Fiscal Principles

- State agencies should pay no more than a reasonable and fair price for client services;
- Payment to the contractor should be made according to the terms of the contract. A clear statement of work should be developed and should directly relate to the method of compensation in the contract;
- The contract should identify the source and amount of funds. If the source of funds is federal, federal rules and regulations must be followed and may supersede state rules and regulations. Consult applicable federal regulations as necessary;
- Contracts should specify that payment will not be made for the same or similar services for the same client more than once (no duplicate payments). The cost of delivering a service or set of services may be distributed by the contractor to more than one contract or funding source. As a result, state agencies should consider including provisions in the contract that hold the contractor liable for requesting double payment for the same unit of work;

- Contractors should have accounting methods and systems that are describable and auditable, as applicable to the circumstances;
- Contractors should comply with accounting measures and principles appropriate to the contractor's type of entity and as identified in the contract;
- State agencies should use the accounting methods and systems published for use in the State Administrative and Accounting Manual (SAAM) at: www.ofm.wa.gov/policy/saamintro.htm;
- Payments made under client service contracts should be necessary and reasonable for the proper and efficient management of the client service program. The costs should be directly attributable to the specific work or the normal administration of the contract;
- Payments made under client service contracts should be adequately documented and supported by appropriate accounting records maintained by both the state agency and the contractor;
- Financial reporting procedures and requirements should be clearly identified in the contract to ensure that contractors are able to record expenses by funding source;
- State agencies should pay contractors for services in a timely manner (RCW 39.76.010); and
- Payment should never be made in advance of the services received.

2.4 Federally Funded Contracts

Contracts supported with federal funds, whether in whole or in part, are subject to federal requirements. Such requirements may be the result of federal statutory provisions, administrative regulations adopted by federal agencies, administrative guidelines distributed by federal agencies or contract award provisions.

There are basic federal rules that apply to virtually all expenditures of federal awards. Each federal agency and the U.S. Office of Management and Budget (OMB) publish these rules, which include:

2.4.1 Uniform Administrative Requirements

State and Local Governments (including recognized Indian entities)

1. Grants Management Common Rule adopted by federal agency Code of Federal Regulation (CFR)
2. OMB Circular A-102

Institutions of Higher Education, Hospitals and Other Nonprofit Organizations

1. Uniform Administrative Requirements adopted by federal agency CFR
2. OMB Circular A-110

For-Profit Organizations

1. Administrative Requirements adopted by federal agency CFR

2.4.2 Cost Principles Requirements

State and Local Governments (including recognized Indian entities)

1. OMB Circular A-87

Educational Institutions

1. OMB Circular A-21

Nonprofit Organizations

1. OMB Circular A-122

2.4.3 Audit Requirements

All Nonfederal Entities

1. Audit common rule adopted by federal agency CFR
2. OMB Circular A-133, including Appendix B – Compliance Supplement

Federal agency regulations (Code of Federal Regulations or CFR) and OMB regulations (Circulars) can be accessed on the Internet at:

CFRs – <http://www.access.gpo.gov/nara/cfr>

OMB Circulars – <http://www.whitehouse.gov/OMB/circulars>

The federal agency regulations and the OMB Circulars are routinely updated. Contract managers of contracts involving federal funds are encouraged to stay abreast of such changes by consulting with fiscal staff or other individuals that follow federal requirement amendments.

When federal funds are involved, a determination should be made before a client service contract is written as to whether the contractor is a subrecipient or vendor. The administrative and management requirements for each differ significantly. The correct designation ensures compliance with applicable federal regulations and determines whether an audit is required of the contractor.

A subrecipient is a non-federal entity that expends federal funds received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program.

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A vendor is a dealer, distributor, merchant or other seller providing goods or services that are required for the conduct of a federal program. See the [OFM State Administrative and Accounting Manual \(SAAM\), section 50.30](#) for further guidance about the subrecipient/vendor determination and [OMB Circular A-133 Audits of States, Local Governments, and Non-Profit Organizations, Subpart B-Audits, .210 Subrecipient and vendor determinations](#).

Contracts should be clearly written to support the determination of subrecipient or vendor status.

A **subrecipient** may:

- Determine who is eligible to receive federal assistance;
- Have its performance measured against whether the objectives of the federal program are met;
- Have responsibility for programmatic decision-making;
- Have responsibility for adherence to applicable federal program compliance requirements; and
- Use federal funds to carry out a program of the organization as compared to providing goods or services.

A **vendor**:

- Provides the goods or services within normal business operations;
- Provides similar goods or services to many different purchasers;
- Operates in a competitive environment;
- Provides goods or services that are ancillary to the operation of the federal program; and
- Is generally not subject to compliance requirements of the federal program.

In some instances, a contractor could be a subrecipient for one state agency and a vendor for another. A contractor could also be a subrecipient for one program within an agency, and a vendor for another program within the same agency.

2.5 Method of Compensation

Prior to the contract award, the services should be analyzed to determine the most effective compensation method (i.e., cost reimbursement, fee for service, fixed price or performance-based). Ideally, the method selected will be one that best ensures delivery of services, encourages efficiencies and effectiveness of service, and provides the best value to state agencies and clients. In some cases, the method of compensation may include a mix of payment methods.

For example, the method of compensation may be based primarily on attainment of specific performance targets but could also include a periodic fixed or lump sum payment after completion of specific work to ensure the contractor has funding sufficient to meet core operating requirements.

If subject to negotiation, proposed contractor budgets or rates of reimbursement should be reviewed to ensure the level of compensation is reasonable and necessary to accomplish agency objectives. Agencies should consider whether there is a reasonable correlation between the quality of service provided and the costs of providing the service as identified by the contractor.

The method of compensation selected may have an impact on the level and type of monitoring activities required to ensure that the state receives the services contracted for, and where specified, the funds are used as intended. Contracts with a cost reimbursement compensation method or contracts that use multiple funding sources are likely to require a higher level of monitoring than contracts using other payment methods. Client service contracts should identify and document the method of compensation that will be used to pay the contractor for delivery of services.

Typical methods of compensation include:

Cost reimbursement: This type of contract or method of compensation has a higher risk for the state agency because it reimburses the contractor for all costs incurred under terms of the contract. To prevent overpayment, allowable cost provisions should be clearly identified in the contract. Contract managers may want to consider including in the contract a provision for a maximum allowable compensation level for the contract period and a budget. These provisions can help to ensure the contractor is not overpaid and that only appropriate costs are reimbursed.

When the contractor will be paid on a cost reimbursement basis and will be using funding sources in addition to those provided under the state agency's contract, contract managers might want to consider requesting from the contractor a description of its methodology for assigning costs to each funding source. Subsequent financial reports should be sufficient to track revenue and expenses by funding source.

When multiple funding sources are used, it may be necessary to work with the contractor to ensure the contractor complies with the contract terms and that the appropriate documentation is maintained so that allowable costs are only billed once to the state agency. Guidance should be provided to the contractor, prior to the contract start date, for any special compliance, documentation or other requirements that are related to the use of multiple funding sources.

Cost reimbursement contracts generally require more fiscal pre-planning and monitoring than contracts employing other methods of compensation.

Fee for service: The contractor receives a set fee for delivering a defined unit of service, based on a rate authorized by the contract. The contract may or may not specify the maximum allowable compensation. The fee may be based on an established rate structure set by law, regulation or policy or may be based on cost information provided by the contractor during a competitive solicitation or contract negotiation.

Fee for service contracts allow many contractors to provide similar required services. With a diverse group of contractors, continued service levels are ensured. This also allows for flexibility in workload changes. The contractor primarily assumes the risk because the agency does not pay if the service is not performed. An example of this compensation method is the court appointed Guardian ad Litem services.

The state agency pays the contractor an hourly rate for each hour of service delivered. Generally, no other miscellaneous expenses are authorized under the contract.

Fixed price or lump sum: The contractor receives a set fixed amount or lump sum payment based on terms established in the contract. Typically, payment is tied to completion of agreed upon performance achievements. Other alternatives are possible, such as progress payments made to compensate for activities conducted over the specific period of the contract. This type of contract should generally establish a maximum allowable level of compensation.

With this method of compensation, the agency does not pay if specific terms in the contract are not met and thus the risk is placed on the contractor. This method allows for a more summarized form of reporting from contractor to agency.

An example of this type of compensation would be a contract to increase the pool of licensed day care providers for special needs children. The state agency pays the contractor a set fixed amount for each successful license attained. Generally, no miscellaneous expenses are authorized under the contract.

Performance-based: These contracts are based on attainment of specific outcomes (e.g., placement of a client into unsubsidized employment). The rate of compensation is generally negotiated based on cost information provided by the contractor. In some cases, the rate may be set by agency policy or other means. Generally, performance-based contracts identify the maximum allowable compensation. This allows the agency to define the quality of services in terms of performance standards and pay accordingly.

Performance-based contracts differ from fee for service or fixed price contracts in that if the quantifiable quality of service is low, the payment may be reduced or withheld. This requires a higher level of reporting from contractor to agency. The contractor primarily assumes the risk because the agency does not pay if performance levels are not met. An example of this type of method of compensation is the placement of a client into unsubsidized employment for six months.

The contractor is paid after the successful achievement of performance expectations. In this case, placing the client is not enough. The agency only pays when the client has been placed for six months in non-subsidized employment. Generally, no miscellaneous expenses are authorized under the contract. For federally funded contracts, be aware that there may be some requirements to reimburse actual costs.

The method used to determine payment to the contractor should ensure that the state receives full value for the money, and the “general principles” listed earlier in this section are considered. Cost settlement procedures should be established by state agencies to ensure they have a process for recovering costs that have been identified in an audit of the contractor as not allowed under the contract. Contract managers should consult with their accounting or auditing staff and with the Office of the Attorney General for further guidance.

2.6 Audits

Contract managers should evaluate the coverage provided by existing and anticipated audits prior to entering into a contract. Additional audit requirements may be identified and written into the contract. When this is not practical, generic language should be included in the contract indicating an audit may be required. See [Chapter 6 Auditing](#) for further information.

2.7 Contractor Selection

Procurement means the method used to select contractors for award and includes both competitive and noncompetitive methods.

Current law specifically exempts client service contracts from the laws governing personal services contracts (RCW 39.29.040(6)). However, it is advisable to use the widest selection process possible for the services being contracted. Federal funding rules and internal agency policies may require a competitive process for certain contracts. Additionally, Governor's Directive 98-01 directs that the pool of potential contractors be broadened to ensure that those qualified are included and given fair consideration in state public contracting.

Agencies need flexibility in selecting contractors to effectively and efficiently meet the needs of state clients. Contract managers may, therefore, select client service contractors by using procurement methods most appropriate to their needs. In general, the higher the dollar amount of the potential contract, the longer its duration, and the more complex the services, the greater the need for formality and competition.

Selecting an appropriate procurement method is one means of ensuring the state receives the best value, balancing cost with the greatest overall benefit for its clients. The following characteristics should be considered when selecting the procurement method:

- Generates the best quality and economic value;
- Provides the greatest long-term benefit to clients receiving services;
- Minimizes disruption of services to clients;
- Promotes the participation of capable and responsible contractors;
- Allows multiple, interested, and qualified providers to be considered;
- Encourages competition where practical;
- Is timely and cost effective;
- Is fair, objective, and ensures equal treatment of prospective contractors;

- Minimizes the burden on administrative resources; and
- Supports the achievement of required contract performance outcomes.

2.7.1 Preparing for the Solicitation Process

Continually updating one's knowledge of the client service provider marketplace provides valuable information once a solicitation process begins. Adequate analysis of contractor past performance and other relevant factors generally results in contracts with providers who are responsible and well qualified.

Convenience contracts can be useful tools.

Some state agencies use "convenience" contracts, which involve having multiple contractors available through contracts to provide specific services for your agency. Whether to pre-qualify potential contractors is a judgment call based on need, experience, and financial considerations. Having a "short list" of client service providers under contract is one way to quickly meet the needs of vulnerable clients. However, qualifications change and these contracts must be routinely updated to ensure participation is as broad as possible. Pre-qualification practices can pose a barrier to new persons or organizations seeking entry into the industry. For these reasons, convenience contracts should be used judiciously.

Potential contractors may be located using many sources:

- Agency referrals;
- Client referrals;
- Newspaper ads;
- Internet;
- Trade journals and periodicals;
- Office of Minority and Women's Business Enterprises directory;
- Professional societies and associations;
- Telephone directories;
- Responses to previous solicitations;
- Other entities that may have used contractors for the same or similar services; and
- Community resources.

2.7.2 Using State Certified Minority and Women-Owned Firms

RCW 39.19 requires agencies and educational institutions to ensure that businesses owned and controlled by minorities (MBEs) and women (WBEs) are afforded the maximum practical opportunity to contract directly and/or to subcontract with the state and to meaningfully participate on state contracts.

The Office of Minority and Women's Business Enterprises (OMWBE) sets annual voluntary participation goals for agencies and educational institutions by class of contract. OMWBE may be contacted at (360) 753-9693 for information or assistance in locating certified minority or women owned businesses. Failure to comply with MBE and WBE contract provisions may result in termination of the contract.

2.7.3 Competitive Procurement

Competition for client services is encouraged, but is not required under RCW 39.29.

Reasons to use a competitive process include:

- Federal or state law requires competition;
- Public policy favors allowing multiple contractors the opportunity to bid for public contracts;
- Competition generally benefits the process;
- To avoid favoritism and promote fairness;
- Input from providers is important;
- Competition is in the public interest; and
- Costs are generally lower.

When competition is deemed appropriate in contracting for client services, the competitive process may be conducted informally or formally. Informal competition may include telephone solicitation, with responses recorded on a standardized form. It may also consist of email and/or facsimile transmissions describing the services needed, proposed schedule, request for information on qualifications and fees, and due date and time for submission of a response. Written solicitations help minimize the chance for error and missed communication, and provide documentation of the process.

When issued, solicitation documents should be distributed to a reasonable number of contractors. A "reasonable" number is a judgment call that is determined by the characteristics of the procurement, i.e. complexity, cost, and number of available qualified contractors. Enough contractors should be solicited to assure fair and open competition and to increase the likelihood of receiving a reasonable number of responses.

Complex client services may warrant formal solicitation including advertising on agency web sites, in daily newspapers, minority interest publications, and/or in professional journals. Refer to [Appendix B](#) for a partial list of newspapers and minority interest publications. Agencies are encouraged to establish policies that set thresholds for formalized solicitation procedures, where applicable.

State agency contract specialists experienced in contracting are an excellent source of guidance.

2.7.4 Non-Competitive and Sole Source Procurement

Reasons to use a non-competitive process or direct award include:

- **Unless the fund source or agency policy requires it, a competitive procurement for client services is not required, pursuant to RCW 39.29.** Sometimes contract managers choose to conduct a competitive procurement merely because “it has always been done that way.”

While this may be a safe strategy, it may not be the best decision for your program. Agencies have a duty under the Governor’s Executive Order 97-03 on Quality Improvement to “improve the quality, efficiency, and effectiveness of the public services it provides through quality improvement, business process redesign, employee involvement, and other quality improvement techniques”. Contract managers should consider whether conducting a solicitation is the best approach, given the following types of considerations:

- **A competitive procurement takes time.** Depending upon complexity, a competitive procurement can take from two weeks to six months. The clients’ needs may require more immediate attention.
- **A competitive procurement can be expensive.** A competitive procurement consumes staff time. Contract managers have to manage the competitive procurement process. Other staff, including support staff, management, and program managers involved in the process should also be considered as part of the cost. Other costs include advertising, copying, mailing, and travel. The process is also expensive for contractors. Preparing and submitting a proposal takes contractor staff time and effort.
- **A competitive procurement can result in disruption of client care.** Continuity of client care is often a critical component of service delivery. Contracting with the same contractors year after year may be in the best interests of agency clients as well as the state agency.
- **A competitive procurement can discourage provider investment.** Some services will require contractor investment in staff or other resources without compensation by state agencies. A contractor who knows that services will be competitively procured again in two years is less likely to make that investment.

Hand picking contractors who are willing to make this investment in exchange for a longer-term contract may be advantageous.

*On-going contracts should be reviewed every **four** years to re-assess the need for competition and the contractor's performance.*

Some client service contracts are continually renewed year after year. Contracts should be reviewed every four years to determine whether competition is warranted and whether pre- and post-contract documentation is necessary.

Contract managers may also use sole source contracts when the client services are of such a unique nature that the contractor is clearly the only practical source of the service. Unique services would be those that are highly specialized or one-of-a-kind. Other factors that may be considered include past performance, cost effectiveness (learning curve), and/or follow-up nature of the required services. Lack of advance planning is not a justifiable reason for a sole source decision. **The contract file should document the basis for sole source award.**

2.8 Screening Contractor Qualifications

Screening contractors is important, even when using the non-competitive procurement method.

Contractor screening criteria and methods will vary depending on program requirements and the type of selection process used. Using screening criteria and methods will help ensure that contractors are qualified to meet program performance expectations.

Contract managers may want to consider screening methods that provide a way to select contractors that are able to meet the following standards:

- The contractor has the appropriate experience, staffing, technical qualifications, and facilities (including any subcontractor arrangements).
- The contractor is able to comply with the proposed or required time of delivery or performance schedule.
- The contractor has adequate administrative and financial capability for effective performance.
- The contractor has a satisfactory record of integrity, judgment, and performance.
- The contractor is otherwise qualified and eligible to receive a contract under applicable laws and regulations.
- If the contract will be funded with federal money, the contractor cannot be on the federal suspended/debarred list, which identifies contractors who cannot be given federally funded contracts.

2.8.1 Licenses, Registrations, and Certifications

In most cases, contractors doing business within Washington State, whether a sole proprietor, partnership or corporation, should have a Washington business license. Additional specialty licensing, registration or certification requirements may also be necessary, depending on the service to be delivered. Washington has a convenient, one-stop system that provides for ease of registration through a master application. Contractors may contact the Department of Licensing, Master License Service Office, in Olympia Washington for further information:

Department of Licensing
Master License Service
405 Black Lake Boulevard, Bldg. 2
PO Box 9034
Olympia, WA 98507-0934
Telephone: (360) 753-4401
<http://www.dol.wa.gov/businesses.htm>

2.8.2 Financial Stability

Prior to selection of a contractor, contract managers may want to give consideration to the contractor's financial stability. Audit reports and/or financial statements of the contractor can be obtained and reviewed to determine whether the contractor has effective financial management practices and internal controls, is in sound financial condition, and whether audit findings, if any, have been resolved. If the audit report contains a statement indicating the scope of the audit was limited, depending on the nature of the limitation, contract managers may want to consider whether or not to contract with the entity. Certain limitations in scope could be a sign of potential problems with the contractor's ability to deliver client services. Contract managers should consult with accounting or auditing staff of the state agency and with the Office of the Attorney General for further guidance in these situations.

For further information on reading audit reports, refer to [Chapter 6 Auditing, Reading an Audit Report](#).

Contract managers may want to require contractors to disclose details of any debarment action, criminal investigation, indictment or other litigation against the organization. In addition, some state agencies may have access to financial assessments of new contractors, which are used to evaluate their financial stability. For example, the DSHS Office of Financial Recovery has a Financial Assessment Questionnaire (refer to [Appendix C](#)).

For further information about this financial assessment process at DSHS, contact the Office of Financial Recovery at (360) 664-5563.

2.8.3 Previous Contractual Performance

Knowledge of past performance of a contractor can enable state agencies to predict the quality and customer satisfaction of future work. Coordinating with other state agencies may be one way to obtain information. References, monitoring reports, audit reports or evaluations are potential resources to aid examination of prior performance.

Aspects of past performance that may be taken into account include:

- Quality of service, including compliance with contract requirements;
- Timeliness of performance such as adherence and responsiveness to contract schedules;
- Cost controls including staying within budget, and providing accurate and complete billings;
- Business practices and key personnel performance including the track record of the organization and its key staff, compliance with fiscal accountability requirements, and effective working relations between the contractor and the agency;
- Customer satisfaction; and
- Previous contract(s) terminated for default.

2.8.4 Minimum/Necessary Qualifications

Minimum or necessary qualifications are determined by the state agency and program based on requirements applicable to the contracted service.

Such qualifications may include:

- Experience providing the service and working with the target population;
- Staff credentials and expertise;
- Capabilities to meet service delivery, program management, and contract administration requirements;
- Criminal history background clearances for individual contractors. Some contracts may require post-award background clearances;
- Insurance coverage; and

- Other special requirements including the ability to provide culturally relevant services, such as speaking languages other than English; physical presence or capacity to deliver services in specific geographic locations; and other qualifications necessary to perform the contract according to agency specifications.

2.8.5 Documentation

It is important to document the decisions made and the information gathered throughout this pre-planning stage. Agencies have discretion in the documentation of contracts. Several examples of documentation tools can be found in [Appendix G](#).



CHAPTER 3

Contract Provisions

Contracts must be clearly written and detailed enough to describe the services expected from the contractor.

A good contract is one that is readily understood, clearly describes the services expected from the contractor, is manageable, and provides a mechanism for measuring the contractor's performance.

All contracts should contain, at a minimum, six basic elements:

- Identification of the parties entering into the contract;
- Signatures of the individuals authorized to bind the parties to the contract;
- A clear description of the work and services to be provided;
- The performance period, including dates when deliverables are due;
- Compensation terms, including the amounts and timing of payment; and
- Terms and conditions, including program and fiscal accountability requirements, as applicable to protect the interests of the parties.

3.1 Model Contract Terms

A model client service contract is included in [Appendix D](#) of this guide. This is an example only and includes model terms and conditions for state contracts. This document may serve as a useful tool for appropriate words and clauses when formulating a contract. These clauses are currently found in many state client service contracts. Keep in mind this document is not all-inclusive and only contains model terms and conditions, not individualized clauses that may be tailored to a specific contract.

3.2 Scope of Work

The scope of work or statement of work should be an accurate, thorough, and measurable description of the essential and technical requirements for the services to be provided. The description should include the desired results and standards to be used to determine whether the requirements have been met.

An effective scope of work is:

- Clearly written, using plain English;
- Results focused, addressing specific procedure or process requirements only when necessary;
- Clearly defined, including all aspects of performance;
- Complete, covering all issues and expectations in sufficient detail; and
- Measurable, in order to determine if and when the contractor has successfully completed performance, and when and how much the contractor should be paid.

3.3 Amending Contracts

Occasionally, it will be necessary to amend a contract by executing a formal modification or amendment. Amendments should be in writing and should contain the same degree of specificity for changes that the original contract contained for the same item. Amendments should be entered into and finalized before the expiration of the original contract.

Documentation of amendments is extremely important. Timely execution of an amendment minimizes misunderstanding, confusion, and loss of momentum that can occur in the absence of a timely written record of changes.

The principle areas where changes are made and for which amendments are required include:

Scope of Work – This may include adding, modifying or deleting tasks, services or deliverables or revising specifications. A change to the scope of work must remain within the general scope of the original contracted service.

Cost – If the amount of money obligated under the contract, whether in the form of fees, hourly rates or maximum consideration, is increased or decreased, a contract amendment is required.

Period of Performance – An extension to the end date of the contract is the most common change to the period of performance.

3.4 HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a federal law addressing several aspects of health insurance and the management of health care information. (Pub. L. 104-191, 110 Stat. 1936, 2054 and 110 Stat. at 2063) (“HIPAA”), and 45 CFR part 160 and part 164. Some client service contracts may require language required by HIPAA in order for the contracting agency to be in compliance with HIPAA. If the service provider is a physician or other medical care provider, they may seek insertion of HIPAA language into the contract so that they are in compliance with the federal law.

HIPAA contains requirements related to the confidentiality of protected health care information, electronic transmission of health care information, including billings, and the security of health care information. It also requires retention of records covered by the law for a six-year period of time.

These provisions generally relate to “business associate” arrangements, where one of the contracting parties is a business associate of a covered entity under HIPAA or where both parties are covered entities sharing protected information. The decision about whether or not HIPAA compliance language or an addendum should be part of the contract is based on whether the parties fall under HIPAA’s legal definition of a covered entity or business associate. The law provides exceptions for certain types or uses of information as well.

When the issue of inserting HIPAA language into a contract is raised, the following considerations apply:

- Are either or both of the contracting parties covered entities under HIPAA?
- Does the provided service include the sharing or disclosure of HIPAA protected health care information?
- Is the type of information created, stored or disclosed in the scope of services covered by the contract-protected information under HIPAA?
- Are either or both of the contracting parties business associates as defined under HIPAA?

If the answer to any of these questions is yes, please contact your agency HIPAA compliance officer or the assistant attorney general for your program to determine whether HIPAA language needs to be part of the contract.

3.5 Performance Measures and Outcomes

Contract managers may want to consider whether performance measures and outcomes should be identified. The purpose of performance measures is to provide a standard or measure for performance of the contracted client services. Performance measures are also used to determine if, and when, the contractor has successfully completed performance, and when and how much the contractor should be paid.

Contract performance measures may:

- Define the standards for measuring contractor performance;
- Provide a means to monitor performance;
- Measure satisfaction with the contractor and client; or
- Provide data for program evaluation.

When developing performance measures, consideration should be given in advance as to how the data is to be submitted, analyzed, and maintained. Key questions to consider include:

- How much information can reasonably be requested, submitted, and analyzed?
- How often and on what schedule must the data be reported?
- How will the information be submitted?
- Who will receive the information?
- How will feedback be provided to the contractor?
- What is the cost and benefit of each proposed performance measure?

Characteristics of good performance measures:

- Are easily understood by contractors, state agencies, and the general public;
- Focus on the performance expected from the contractor;
- Are well defined and consider both the quantitative (how much?) and qualitative (how well?) aspects of performance;
- Include a well-defined method for reporting data;
- Are relevant, timely, and verifiable; and
- Are realistic in terms of available resources, funding and timelines, and recognize external factors beyond the control of the system.

Contract managers should check the funding source or statutory authority to determine whether any specific outcomes are mandated.

Then, consider the following questions:

- How will you know the service has actually been provided (other than taking the contractor's word for it)?
- Are you concerned about the quality of the service? If so, include a mechanism for measuring quality.
- Are you looking for a specific outcome, such as job retention?
- Is payment contingent on an event, product or outcome? If so, how will you ascertain that the contractor has satisfied the requirement? If not, consider tying payment to an event, product or outcome.

3.6 Performance-Based Contracts

Performance-based contracts describe **what** the contractor is expected to accomplish, **not how** the contractor will complete the work. Therefore, contractors provide more strategic input into determining the best method and approach for the services to achieve the results desired by the state. Performance-based contracts typically tie payments to outcomes or deliverables, not just the number of hours of service provided. Agencies are encouraged to use performance-based contracts whenever feasible, as a means to achieve specific outcomes related to the services provided.

3.7 Hold Harmless and Indemnification

The Hold Harmless and Indemnification provisions in client service contracts protect state agencies from assuming responsibility for the *contractor's* acts and omissions. These provisions do not shield the state agencies from responsibility for its own acts and omissions.

Under the **Hold Harmless** provision, the contractor releases state agencies from any responsibility for losses to a third party arising from the acts and/or omissions of the contractor or its officers, directors, partners, employees, and agents while the contractor is performing work under the contract. For example, if a client is injured in a contractor's facility due to the carelessness of one of the contractor's employees, the contractor cannot seek reimbursement from state agencies for the amount the contractor has to pay to the client who suffered the loss.

The **Indemnification** provision requires the contractor to reimburse state agencies for losses incurred by state agencies because of the contractor's acts or omissions in performing under the contract. One example is when a state agency is sued by a client who is seriously injured when she falls through a rotting front step at the contractor's place of business. If the client sues the state agency for those injuries, the contractor would have to pay all costs for investigating, negotiating, defending, and settling the suit.

Refer to the model client service contract in [Appendix D](#) for examples of language.

3.8 Liability Insurance

The Office of Financial Management Risk Management Division (RMD) recommends that agencies include insurance requirements in their contracts. At a minimum, RMD suggests that contractors be required to purchase general liability and employer's liability insurance and comply with workers compensation laws. For more information on RMD's suggested insurance specifications, refer to *Contracts: Transferring and Financing Risk*. This manual is available in hard copy through RMD or on the OFM website at: <http://www.ofm.wa.gov/rmd/publications.htm>. If you have further questions, you may contact the Risk Management Division at (360) 902-7303. Contract managers should contact agency internal staff who may be knowledgeable about insurance requirements before contacting RMD.

Contract managers should analyze the type of services to be provided and evaluate the state's exposure to legal liability that may result from contracting. State agencies can be financially protected from those who seek legal recourse by requiring client service contractors to carry insurance.

Insurance can also protect clients by providing a funding source for those clients seeking recovery from a contractor in the event of a loss or injury. For example, if a state agency client is injured at a contractor's place of business, and if the contractor has insurance covering such claims, the insurance can be used to fund the client's losses. If the contractor does not have insurance, the client may not be able to recover his/her medical bills and other losses associated with the injury.

Refer to the model client service contract in [Appendix D](#) for examples of language.

3.9 Industrial Insurance Coverage

When a state agency enters into a client service contract, the contractor's employees should be covered by industrial insurance. This protects the state's interest, if either the contractor or someone employed by the contractor is injured while performing work under the contract.

With few exceptions, Title 51 RCW holds the contracting agency responsible for making sure the contractor has coverage. Employments excluded from mandatory coverage are listed in RCW 51.12.020 and include sole proprietors, partners, corporate officers and others. The employer may elect optional coverage for these employments.

To promote compliance with Title 51 RCW and avoid unplanned financial liability for the payment of industrial insurance premiums, agencies should review RCW 51.08.070, 51.08.180 and 51.08.195 and determine whether a potential contractor meets either the definition of "employer" or that of a "worker." Making this determination may require a complex analysis. To assist in determining whether the designation of "employer" or "worker" is applicable, please call the Field Audit Compliance of the Department of Labor and Industries at (360) 902-4769, (360) 902-4753 or you may contact by email at verifystatecontracts@lni.wa.gov. For security, please include (1) your full name, (2) your agency name, (3) the purpose of your request, and (4) an explanation of the attachment, if any.

For client service contracts where the contractor meets the definition of "employer" under RCW 51.08.070, the following language should be incorporated in the contract's general terms and conditions:

Industrial Insurance Coverage – The contractor will comply with the provisions of Title 51 RCW, Industrial Insurance. If the contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, the agency may collect from the contractor the full amount payable to the Industrial Insurance Accident fund. The agency may deduct the amount owed by the contractor to the accident fund from the amount payable to the contractor by agency under this contract, and transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the contractor.

In those instances where the contractor meets the definition of "worker" under RCW 51.08.180 and 51.08.195, the Department of Labor and Industries suggests the following alternative language: The agency acknowledges that the essence of the work specified in this contract constitutes personal labor, thus making the contractor a covered "worker" as defined in Title 51 RCW. The agency therefore agrees to provide industrial insurance coverage for the contractor during the course of employment under this contract, as may be required under Title 51 RCW.

Contractors must be licensed with the Department of Labor and Industries to perform work in the construction trades. The types of work that require such licensing are described in RCW 18.27.010 and 19.28.120. Agencies can verify a contractor's compliance with Titles 18 and 19 RCW by contacting the Contractor Registration Unit at (360) 902-5202. In the event the contractor is found to be noncompliant, the agency may still enter into the contract, but should notify the contractor that no payments for service provided under the contract will be made until the contractor furnishes evidence of full compliance. For long-term contracts, the agency should require the contractor to provide proof of continuous compliance with Titles 18 and 19 RCW prior to release of final payment under the contract.

3.10 Fiscal Issues/Reporting

Methods of compensation and billing should be clearly identified in the contract. Refer to Chapter 2, Pre-Contract Planning, for a discussion of the various methods of compensation.

Financial reporting provisions require a contractor to report on or allow access to financial information at defined intervals during the contract or upon contract completion or termination. The purpose of financial reporting provisions is to aid in monitoring contractor performance and/or fiscal accountability and to allow contract managers to make informed decisions about the contractor's ability to perform.

Key considerations for financial reporting provisions are:

- Define the type of information and documentation required;
- Specify dates or intervals for reports, if any;
- Require access to contractor staff, records, place of business, and client records, as appropriate; and

- Require intensive financial record monitoring based upon the method of compensation.

Refer to the model client service contract in [Appendix D](#) for examples of language.

3.11 Fiscal Documentation

The contract should define the information and documentation required to justify payment.

At a minimum, payment documentation should include evidence of authorization for purchase, receipt of goods or services, and approval for payment. For client service contracts, the evidence of authorization for purchase is the contract. The evidence of receipt of services is generally the contractor's invoice and appropriate supporting documentation, such as sign-in sheets showing training participants. The approval for payment can be documented by the initials of the approving staff and date on the contractor's invoice or by an electronic approval process. For further information, refer to Section 85.32.30 of the State Administrative and Accounting Manual, published by the Office of Financial Management at <http://www.ofm.wa.gov/policy/85.32.htm>.

Financial record retention and access should follow state agency requirements and should be identified in the contract. The Office of the Secretary of State publishes the General Records Retention Schedule for Agencies of Washington State Government at <http://www.secstate.wa.gov/archives/gs.aspx>

Refer to the model client service contract in [Appendix D](#) for examples of language.

3.12 Remedies and Sanctions

Remedy and sanction contract language permits the imposition of penalties or other terms against a party for noncompliance with the contract. The purpose of remedy and sanction provisions in a contract is to ensure compliance with the contract terms by all parties to the contract. Also, these provisions allow options to correct, sanction or terminate a contractor, who fails to adequately perform under the terms and conditions of the contract.

Considerations for remedy and sanction provisions:

- What mechanisms are in place to ensure contract compliance and performance?

- Do federal or state requirements exist that must be enforced?
- Which provisions will most likely encourage contract compliance and performance?
- Are alternative service contractors available?
- What are the implications of service disruption to clients?

Remedy and sanction provisions may include:

- Implementation of a corrective action plan after auditing or monitoring;
- Financial incentives or penalties, including the right to withhold payment;
- Federal debarment or suspension of the right to contract with an agency or agencies;
- Preservation, protection, and return of information and property;
- Dispute resolution procedures;
- Summary suspension of the contract; or
- Termination of the contract.

Refer to the model client service contract in [Appendix D](#) for examples of language.

3.13 Terminating Contracts

Termination provisions in a contract permit a party to terminate or end a contract prior to the expiration date. The purpose of a termination provision is to define the rights of the parties to terminate, including required terms, conditions, and notices.

Generally, there are two types of termination:

- Termination for default (or breach); or
- Termination for convenience.

Considerations for termination for default and convenience include:

- Which parties will have the right to terminate for convenience?
- Which parties will have the right to terminate for default?
- Under what conditions does each party have a right to terminate?

Examples include:

- Change or loss of funding;

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- Convenience of one or both parties;
- Was there failure to meet or maintain conditions or qualifications necessary to carry out the terms of the contract?
- Was there breach or default of contract obligations?
- Was there failure to comply with applicable laws or regulations?
- Was there failure to ensure client health and safety?

Another consideration under termination for convenience is when funding is withdrawn from a contract. In this situation, which is addressed in the “Savings” clause in the model client service contract, a termination for convenience process is used.

Other considerations related to contract termination include:

- How much notice must each party give?
- Must there be an opportunity to correct?
- Is dispute resolution a pre-requisite?
- What procedures or rights do the parties have after termination?
- How will the contractor cease performance of services?
- Which contract provisions survive termination or expiration?
- Access to staff, records, and place of business.
- Preservation, return and delivery of information and property.
- Safety and transfer of clients and/or client property.
- Withholding payment and damages.
- Other specific termination instructions.

Refer to the model client service contract in [Appendix D](#) for examples of termination language.



Technical assistance means providing information to contractors with the goal of increasing competence or capacity in a particular area or reducing the probability of a performance error. Technical assistance should be ongoing and proactive, but does not mean the state agency is responsible for teaching a contractor how to operate a business. Inherent in entering into a contract is the assumption that the contractor is competent and capable of performing all of the duties specified in the contract.

4.1 Purpose

The purpose of technical assistance is to:

- Enable contractors to provide better services to clients;
- Increase contractors' level of confidence in their ability to comply with contract terms and conditions; and
- Enhance the cost effectiveness of the relationship between the state agency and the contractor.

Technical assistance aids in meeting program objectives by offering the opportunity to:

- Increase interaction and communication between contract managers and contractors;
- Offer instruction relative to specific technical aspects of the contract and program; and
- Reduce the risk of performance errors.

Performance errors can range from the failure to correctly submit billings to the untimely performance of program related activities. A pre-contracting risk assessment will identify areas of potential performance mistakes or issues. While some performance mistakes or issues may be perceived as having greater significance than others, all such factors can serve to disrupt the contractual agreement and program delivery.

The need for technical assistance may be indicated when:

- Contractors ask repetitive questions on the same subject;
- There are recurring issues pertaining to contract terms and conditions;
- There is personnel turnover; and
- There are new requirements tied to specific funds.

Indicators may surface from:

- Risk assessment;
- Contract monitoring activity;
- Audits;
- Contractor's self-assessment; and
- Citizen or client observations.

When potential problem areas of a contractor are identified, the contract manager should decide on the type and amount of technical assistance needed to resolve the issues. Contract managers should also document these potential problem areas and any technical assistance provided to the contractor.

Be aware that providing technical assistance is not controlling the day-to-day activities of a contractor. If an agency exercises control, the contractor may be able to allege that non-performance problems were the result of agency control.

4.2 Technical Assistance Activities

Technical assistance can be delivered in many forms with varying levels of involvement by the contracting agency. A contract manager might:

- Provide guidance to the contractor to remedy the identified area of concern;
- Provide formal or informal training assistance for a single entity or multiple entities;
- Refer the contractor to another organization that has overcome a similar problem and can serve as a model;
- Request that other organizations (private foundations, other contracting agencies) provide assistance as needed; or
- Contract with an outside organization to provide technical assistance to the contractor.

The following situations may warrant the need for heightened technical assistance:

- A first time contractor with a state agency;
- A very small entity with little experience with federal and state requirements;
- A contractor providing new services it has never before offered; and
- A contractor struggling with program or business management.

If issues continue, contract managers may want to consider whether monitoring of the contractor should be increased.



CHAPTER 5

Contract Monitoring

Monitoring means any planned, ongoing or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. The level of monitoring should be based on a risk assessment of the contractor's role in delivering client services and the contractor's ability to deliver under the terms of the contract.

5.1 Purpose

The purpose of monitoring is to assist the contractor in:

- Complying with the terms and conditions of the contract and applicable laws and regulations;
- Preventing non-compliance by identifying and resolving potential problems by providing constructive, timely feedback; and
- Making progress toward the expected results and outcomes.

While the contractor has responsibility to perform under the terms of the contract, the state agency has responsibility for reasonable and necessary monitoring of the contractor's performance. Effective contract monitoring can assist in identifying and reducing fiscal or program risks as early as possible, thus protecting both public funds and the clients being served.

Monitoring occurs throughout the life of the contract.

Monitoring may be viewed as:

- A valuable source of information concerning the effectiveness of services and service delivery methods;
- A preventative function; and
- An opportunity to determine the need for enhanced technical assistance, guidance, and training.

5.2 Responsibilities

The individual or team member that has the necessary program expertise, fiscal expertise, authority to assess service quality and authority to assess compliance with contract provisions should carry out the contract monitoring responsibilities. Executive management should give guidance to staff about monitoring expectations and should clearly communicate who is responsible for monitoring.

Contract managers are encouraged to partner with other state agencies in monitoring the activities of a contractor, as appropriate.

Typical responsibilities of contract monitoring include:

- Comparing the actual performance of the contractor to the contract terms and agreed upon performance indicators;
- Identifying all federal and state funds received by the contractor and coordinating with other funding sources, as necessary;
- Verifying the contractor has fulfilled requirements of the contract before approving invoices for payment;
- Comparing and tracking payments to the contractor against contract terms;
- Ensuring timely payment of invoices in accordance with state laws, the contract terms, and agency policies;
- Ensuring that the contractor is not reimbursed more than once for client service delivery;
- Ensuring that any required audits are performed and received when due;
- Evaluating audit findings and the status of corrective action; and
- Identifying and following any federal or state monitoring requirements.

5.3 Monitoring Plan

The level of monitoring is based on the risk assessment.

One means of defining the specific monitoring methods appropriate to a particular program or service, and the monitoring activities to be completed for an individual contractor, is a monitoring plan. The plan can identify the tools to measure and assess contract performance and compliance, and the process for collecting information. The plan can also enable an agency to assess the contract management resources necessary to ensure adequate oversight. The level of monitoring should be commensurate with the importance or sensitivity of the service. Further, the plan can identify how monitoring activities might be coordinated between multiple state agencies providing funding to the same contractor. Ideally, the monitoring plan will be prepared concurrent with the contract to ensure consistency and that contract requirements support the planned monitoring activities.

Not every contract will require the same level of monitoring. Contracts deemed high risk (refer to [Chapter 1 Contract Management, Risk Assessment Approach](#) section) will require more monitoring than those deemed low risk.

When the results of monitoring demonstrate consistent satisfactory performance, the frequency and extent of monitoring may be adjusted accordingly. This can save the state money, reduce oversight burdens on the contractor, and recognize the contractor's good performance.

When assessing risks to determine the level of monitoring, the identified risks should be linked to the monitoring plan. Refer to [Appendix H](#) for an example of a Risk/Monitoring tool, which links risk factors to the monitoring plan.

Some state agencies may have an agency monitoring plan. This monitoring plan would address agency expectations of assessing risks, the frequency of monitoring visits, and the type of monitoring activities that could be utilized.

5.4 Monitoring Activities

Monitoring activities may include:

- **Periodic contractor reporting.** Require the contractor to submit progress reports or other appropriate data or reports, based on pre-defined criteria, and review the contractor's reports for verification of services provided and adherence to the contract. Substandard performance should be identified and addressed timely and appropriately.
- **Agency review of audit reports.** Review any required audit reports and audit work papers and ensure the contractor takes appropriate and timely corrective action.
- **Invoice reviews.** Compare billings with the terms of the contract. Ensure the costs being charged are within the contract parameters.
- **On-site reviews and observations.** Conduct onsite reviews, interview contractor staff to ascertain their understanding of program goals, interview clients about services received, review key systems and service documentation, review client case records, review personnel records to ensure staff have appropriate credentials, review fiscal records, and observe operations whenever possible. The results of these visits should be documented in writing and compared with contract requirements.
- **Other periodic contact with contractor.** Maintain contact with the contractor to review progress on a regular basis. Good contract monitoring includes a continuous dialogue with the contractor.

- **Client surveys.** Survey clients concerning contract service delivery and quality. Require the contractor to resolve complaints. Keep records of both the complaint and method of resolution.

Contract files should include documented evidence that conscientious monitoring is occurring.

Monitoring involves prudent collection of information about contractor operations and is not limited to site visits or the completion of formal reviews. Every communication with a contractor is an opportunity to document monitoring activity. Adequate documentation is essential for effective contract monitoring. Contract files should include copies of letters, meeting notes, and documentation of phone conversations as evidence that conscientious monitoring has occurred during the period of the contract.

Fiscal monitoring includes review of the contractor's invoices and supporting documentation. Before authorizing payment, contract managers should ensure the contractor has adequately demonstrated the satisfactory delivery of services as agreed in the contract. Contract managers should verify the accuracy of the contractor's invoices and documentation, whether billings are consistent with contract requirements, and whether total payments are within the limits set by the contract. Contract managers should ensure that payment documentation required in the [State Administrative and Accounting Manual \(SAAM\), section 85.32.30](#), is on file.

The method of compensation selected may have an impact on the level and type of monitoring activities required to ensure that the state received the services contracted for, and, where specified, the funds are used as intended. Contracts with a cost reimbursement method of compensation, contracts that deliver multiple similar services or contracts that use multiple funding sources (particularly those supported with federal funds) often require a higher level of monitoring than contracts using other methods of compensation. A higher level of monitoring may involve more testing, such as additional review of contractor reports and documentation, site visits or a combination of these methods, and closer analysis of costs reimbursed by the agency.

Appropriate fiscal monitoring procedures should be determined as needed. Decisions regarding the scope and methods may take into account requirements established by the funding source, risk assessment results, and other relevant factors. For additional information on fiscal monitoring, consult with agency accounting or auditing staff.

Program monitoring deals more specifically with compliance of contract program requirements. If outcomes or goals are identified in contracts, this should be part of the monitoring process. Also, contract managers who monitor contracts are encouraged to review contracts for clarity.

When monitoring, contract managers may become aware of areas where the contract could be written more clearly. Changes to the original contract may be necessary to clarify contractor expectations. These contract amendments should be in writing.

5.5 Corrective Action

Corrective action is suggested when identified deficiencies are serious (for example, a failure to ensure client health or safety) or where less formal means have failed. Contract problems should be addressed immediately, before they become recurring or serious. Contract managers should, of course, follow their agency's guidelines or directives for taking corrective action if such exist.

Corrective action means action taken by the contractor that corrects identified deficiencies, produces recommended improvements or demonstrates that deficiencies or findings are either invalid or do not warrant action.

Serious contract problems that warrant corrective action include:

- Failure to ensure client health or safety;
- Significant audit or monitoring findings;
- Inferior quality of services;
- Failure to perform all or part of the contract;
- Consistent late performance;
- Late submission of reports on a recurring basis; and
- Inadequate, unclear or excessive billing.

For the staff completing corrective action with contractors, typical responsibilities include:

- Communicating contract remedies, as appropriate, when the contractor's performance is deficient; and
- Seeking specialist advice, including legal counsel, when unsure of the rights of either party or the correct action.

To address minor problems or first occurrences of problems, contract managers should:

- Notify the contractor both verbally and in writing that a problem has been identified;

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- Notify the contractor of expectations for correcting the problem or, if appropriate, ask the contractor to advise how the problem will be corrected;
- Specify a date or time when you expect the problem to be resolved or action taken; and
- Document conversations with the contractor by a memo to the contract file, and/or follow up with a written letter to the contractor.

To address recurring or serious contract problems, contract managers should:

- Document conversations with the contractor and set time frames for corrective action;
- Check to see if applicable law or regulations direct how corrective action must occur. If so, comply with the legal requirements. For example, the corrective action process applicable to some licensed facilities is set out in the Washington Administrative Code at <http://slc.leg.wa.gov/>;
- Clearly identify the problem verbally and in writing. Be specific by using dates, number of occurrences or other data that quantifies the problem. For example, “Paragraph 4 of your Contract states that you must submit a report by the 5th of each month. Your reports for May, June, and July were all submitted over 5 weeks after the due date, and we have not yet received your August report”;
- Advise the contractor in writing about the requirements to correct the problem or, if appropriate, ask the contractor to submit a corrective action plan, including dates when corrective action will be completed. Set a deadline for submission of the plan. If this results in any changes to the contract, amend the contract;
- Specify a date or time frame for resolution. Unless a shorter or longer time frame is warranted, expect corrective action to be completed within one month;
- Track all corrective action to ensure completion;
- If a deadline is missed or corrective action is otherwise not completed, follow up in writing immediately. Notify the contractor that a deadline has been missed and ask the contractor when the action will be completed. Advise the contractor that failure to comply with the corrective action plan could lead to termination of the contract; and

Note: *Failure by contract managers to follow up on corrective action could be interpreted later by the court as a waiver.*

- If the corrective action is successful in resolving problems, notify the contractor in writing that resolution has been achieved. Remember to document this in the contract file.

5.6 Suspected Criminal Activity

Some activities, such as over billing by a contractor, may be either genuine errors by the contractor or, in extreme cases, may be the result of criminal activity. Generally, the contract manager should consider the contractor's explanations, while remaining sensitive to the possibility of fraud or related criminal activity. Although such instances are rare, the contract manager is often the first person with the opportunity to identify suspicious activity. It is imperative that action be taken quickly and in accordance with your agency's process for investigating criminal activity.

State agency staff also should consider whether RCW 43.09.185, Loss of Public Funds – Illegal Activity – Report to the State Auditor's Office, applies when there is suspected criminal activity by a contractor. This RCW requires reporting known or suspected loss of public funds or assets or other illegal activity to the State Auditor's Office. For further information, refer to [SAAM 20.30, Suspected Losses of Public Funds or Property](#).

State agency staffs who conduct investigations must participate in Investigator Training offered by the Department of Personnel as required by Executive Order 98-02.

5.7 Termination for Default

Failure by the contractor to comply with the contract terms may require termination for default. The contract should contain procedures to be followed. Termination should proceed in consultation with the Office of the Attorney General. Refer to [Chapter 3, Contract Provisions](#), for further information about terminating contracts.

5.8 Post-Contract Follow-Up

Contract monitoring responsibilities end once the contract ends. Final monitoring responsibilities include:

- Following up on any activities that the contractor is completing (i.e., final report);

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- Ensuring all invoices are received and paid, and making final payments to the contractor;
- Following up on audit findings; and
- Assessing whether program objectives and outcomes have been met.

Contract managers should evaluate contractor performance and document, as appropriate, whether the contractor has met all the terms and conditions of the contract.



CHAPTER 6

Audit

Auditing is broadly defined as the independent examination of an entity's records or actions to evaluate compliance with financial, legal, contractual or policy requirements.

Agency contract managers and contractors are responsible for complying with federal and state requirements in the performance of client service contracts. This responsibility includes having an audit when required by law or by contract. Audit requirements exist for federally funded programs (refer to OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations at www.whitehouse.gov/OMB/circulars). When writing contracts, agencies have the option to call for an audit beyond those required by law.

An audit can be designed to accomplish one or more of the following:

- Provide reasonable assurance as to the financial information reported by or obtained from the contractor;
- Assess the financial condition of a contractor;
- Assess the internal control system of a contractor;
- Assess the performance of a contractor; and
- Assess compliance with applicable laws and contract provisions.

Is an audit different from monitoring? Yes. An independent party usually completes an audit, while state agency staff involved in the contracting process typically conducts monitoring. Audits are conducted according to standards, such as the Generally Accepted Auditing Standards or GAAS, while monitoring generally involves review of contractor compliance with contract terms and conditions. Audits result in a published report and typically occur after the contract is completed. Monitoring occurs while the contract is ongoing and may be documented through internal report.

When contemplating audits not required by law, contract managers should consider the level of need for an audit of state or federal funds. As with program monitoring, contract managers are encouraged to use a risk assessment process to determine the need for audit coverage of client service contractors.

When an audit is deemed appropriate and necessary, the expectations for the audit scope, methodology and due date should be included in the written contract. Typically, the contractor hires the auditor. However, contract managers may hire auditors for state funded contracts. For information about procuring an audit, refer to [Appendix E](#).

While an audit can be an effective tool in demonstrating accountability, it carries a cost. Therefore, it is important that care be exercised in calling for audits. For information on specific types of audits that may be utilized with contractors, refer to [Appendix F](#).

6.1 What to Audit and When - Using a Risk Assessment Approach

When state or federal law does not require an audit, contract managers should consider the benefit of an audit. The decision should be based on a risk assessment, which includes consideration of the risk associated with the program and the contractor; the sensitivity of the program; and an understanding of all funding received by the contractor. State agencies should develop methods of assessing risk.

Risk Associated with the Client Service Program and the Client Service Contractor: Guidance on developing and using risk assessment criteria based on the risk associated with the program and the risk associated with the contractor is provided in [Chapter 1, Contract Management](#), *Risk Assessment Approach to Contract Management* section.

Sensitivity of the Program: These factors can be broken into four major areas:

- **Complexity** – Is the program funded by multiple state agencies?
- **Consequences of Non-Performance** – If the contractor failed to perform, would the state agency be unable to meet a legislative mandate or its agency mission? Could it result in a loss of significant federal, state or other funding? Would it result in a loss of opportunity for providing or improving existing services?
- **Impact on the Public** – Does the program require the contractor to have direct contact with the public, including benefits to, payment by, and transactions with clients? Does the contractor have indirect impact on the public, including making decisions that are viewed as important by the public?
- **Impact on State Operations** – Does the contractor's performance have a statewide or multiple agency impact? Is the impact limited to a single state agency or a work group within a state agency?

Funding Received by the Contractor: Before making a decision on whether to audit a given contractor, contract managers should gain an understanding of all funding received by the contractor. This enables contract managers to better assess the risk associated with overlapping program objectives and funding sources.

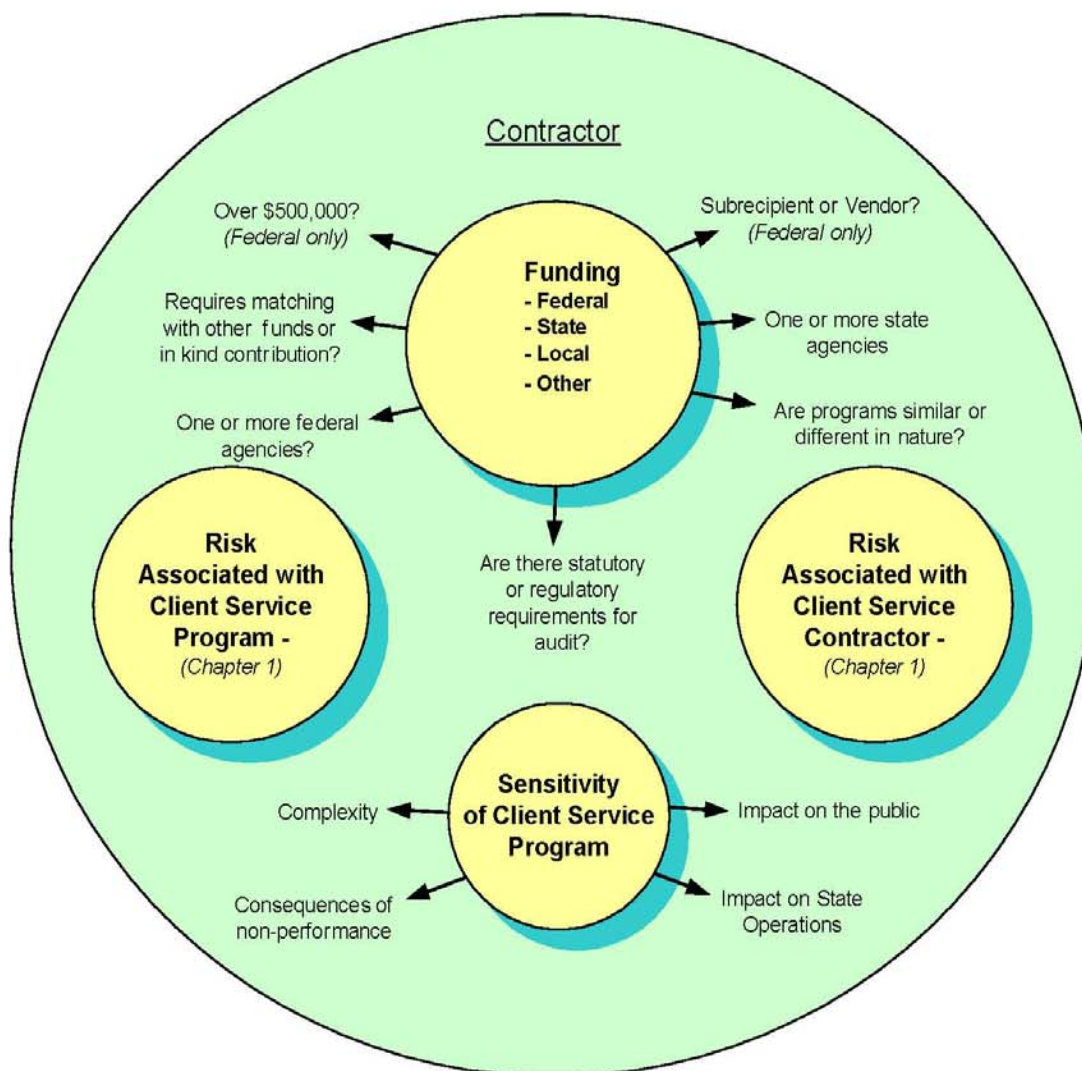
Some questions to ask in identifying funds received by the contractor are:

- **Does the contractor have matching requirements?** Federal or state programs may require contractors to spend money on program objectives, in addition to the funding provided in the contract. These matching requirements are frequently met with private or other funds or in-kind services.
- **Is the contractor a subrecipient or vendor under the contract?** Please refer to the [Chapter 2, Pre-Contract Planning](#), *Federally Funded Contracts* section.
- **Is the contractor a subrecipient, expecting to spend more than \$500,000 in federal funds during its fiscal year, including contracts awarded by other state agencies or other entities?** If the contractor is expected to spend more than \$500,000 in federal funds, they are subject to OMB Circular A133 Audit requirements. If not, they still may be subject to an audit requirement imposed by the entity providing the funds.
- **Does the contractor have state funded contracts awarded by other state agencies?** To make effective use of limited resources, contract managers should coordinate audit efforts, whenever possible.
- **Is funding that is provided to the contractor material in relation to the program?** Would an error or misappropriation of funds have an impact on the success of the program regardless of the \$500,000 federal threshold?
- **Has monitoring disclosed ongoing problems in under or over spending with various categories or timelines?** If so, this could indicate a problem not disclosed by monitoring alone.

The OFM Client Service Contracts Database (CSCD) may be helpful to state agency staff in determining other fund sources received by contractors through various state agency contracts. This is especially important when considering federal funds and whether contractors are above the \$500,000 threshold.

Refer to the following page regarding risk factors for audits.

Risk Factors



6.3 Making the Decision to Audit

Once an assessment has been made of the risk associated with the program, the risk associated with the contractor, the sensitivity of the program, and an understanding of all funding received by the contractor, contract managers should have the information necessary to make a decision on whether to require an audit. Contract managers should decide how to distribute their audit resources among contractors, based on the relative risk and sensitivity. The decision should include the type and scope of audits to be performed.

To make the most effective use of resources, contract managers should then determine the extent to which the contractor is subject to financial, compliance and special purpose audits, and what will be covered by these audits so as not to duplicate audit work. However, contract managers should bear in mind that such audits might not include coverage of areas of concern to the agency. Contract managers should contact other agencies to coordinate audit efforts.

In coordinating audit efforts with other state agencies, questions to consider include:

- Does the contractor receive both state and federal funds from other state agencies?
- Does the contractor receive only state funds from other state agencies?
- Are federal contract expenditures under \$500,000 per year?
- Does the contractor subcontract with other entities? Were the subcontracted entities audited?
- Do different agency programs have the same fiscal period?
- Are the programs sufficiently similar to use common audit techniques?
- How is the funding distributed?

6.4 Reading an Audit Report

Generally, an audit report includes opinions from the auditor, in addition to the entity's financial statements and any findings. The auditor's opinions include a "scope" paragraph and an "opinion" paragraph, although they are usually not labeled as such.

The scope paragraph may state that the scope was limited for the following reasons:

- The auditor was engaged to look at only a portion of the contractor's activities.
- The auditor did not have full access to the contractor's records.
- The auditor was not independent of the contractor being audited.
- There was a lack of sufficient documentation to audit.
- Other limitations were imposed on the auditor by the contractor, which restricted the auditor's ability to perform the audit in accordance with auditing standards.

If a contract manager is reading an audit report and the scope paragraph states there was a limitation in the scope of the audit, the contract manager should consider whether this adversely affects the value of the audit to the agency's program. In addition, consideration should be given to whether the limitations in scope are an indication that the contractor is not able to, and did not, deliver the contracted client services. If so, contract managers may need to consider terminating the contract.

If there was no limitation in the scope of the audit, the scope paragraph will generally state the name of the contractor, the time period audited, and that the audit was conducted in accordance with generally accepted auditing standards. This type of scope paragraph indicates the auditor was able to perform a complete audit according to generally accepted auditing standards.

The opinion paragraph of the auditor's report gives the auditor's opinion about the results of the audit, the conclusion as to the fairness of the financial statements, and the contractor's compliance with requirements established by the contract and/or internal controls and financial reporting requirements. When the auditor gives an opinion about the financial statements, the auditor states whether the financial statements are presented fairly in accordance with generally accepted accounting principles or GAAP.

Audit opinions are sometimes very complex. Opinions may be "unqualified," meaning the auditor has determined the financial statements were fairly presented in accordance with GAAP. Opinions may also be "qualified," "adverse," or may contain a "disclaimer of opinion," that could indicate problems with the contractor's ability to deliver client services.

These exact words may not be used, so it is advisable to seek advice from agency audit staff or other knowledgeable personnel as to the type of audit opinion.

Findings are written by the auditor to identify problems noted during the audit that require resolution. Generally, a finding is written when there is non-compliance with the contract terms or with federal or state laws or regulations or when a material internal control weakness exists. Generally, the auditor will provide the contractor an opportunity to respond to the finding and include the contractor's response with the text of the finding when published. Recommendations are written by the auditor as part of a finding to give the contractor suggestions on how to resolve the finding and avoid future occurrences.

A finding can include questioned costs. Questioned costs are normally those costs associated with an audit finding that are determined by the auditor to be unallowable contract charges.

Sometimes the auditor will not write a finding but instead will report a problem in a separate management letter to the contractor. Generally, management letters are written to report less significant problems and are not included in the audit report.

Contract managers should consult with agency accounting or auditing staff for further guidance.

6.5 Audit Resolution

State agencies should establish a process for dealing with resolution of the audits where findings and/or questioned costs exist. If federal funds are involved, OMB Circular A-133.315 requires follow up and corrective action on all federal findings. The audit resolution process should also be addressed in the contract.

6.5.1 Decisions Regarding Findings

State agency management should make a decision regarding whether findings in an audit report are substantive enough to warrant resolution.

Normally, if a finding exists in a published audit report, whether issued by Federal auditors (Office of Inspector General or OIG), an independent CPA firm, the State Auditor's Office or a state agency's internal audit staff, resolution of audit findings is warranted.

An audit resolution process might include the following:

- Written notification to the contractor of the audit finding(s);
- Opportunity for the contractor to respond to the finding by a concurrence or non-concurrence with the finding(s); or
- Opportunity for the contractor to submit further documentation or reasons for non-concurrence with the finding(s).

State agency management may decide to sustain an audit finding or not require corrective action based on the information received during the resolution process. The agency should document its process and decisions.

6.5.2 Corrective Action

As part of the resolution process, contractors may be required to submit a corrective action plan to contract managers. The corrective action should be comprehensive and in sufficient detail to resolve the finding and prevent future occurrences. Corrective actions may or may not include the auditor's recommendations. Questioned costs, if applicable, should be addressed in the corrective action plan. For federal funds, OMB Circular A-133.315 may require reporting to the federal government. For further information, refer to [Chapter 5, Contract Monitoring](#), in the [Corrective Action](#) section.

6.5.3 Appeals

Generally, the contractor should be given an opportunity to appeal the consequences of a management decision about an audit finding before an objective third party. State agency procedures should allow for appeals of management decisions regarding audit findings and questioned costs. Contract managers should contact their assigned Assistant Attorney General for assistance with developing, writing or implementing appeal processes and any other questions about appeals.

6.5.4 Handling Questioned Costs

Questioned costs are normally those costs associated with an audit finding. These costs can be handled in several ways.

First, a decision on whether or not to pursue recovery of the questioned costs should be made. There may be good reasons not to pursue recovery of the questioned costs. While this is an option, there must be compelling reasons and authority, generally based on Assistant Attorney General guidance, to exercise this option.

Options for recovering questioned costs may include:

- Billing the contractor;
- Adjusting future payments until the questioned costs have been recovered; and
- Deducting the questioned costs from the final payment.

Contracts dealing with federal funds may require different processes. Also, it is important to note that when recovering questioned costs, the repayment by the contractor is generally not an allowable cost for current contracts.

6.5.5 Lack of Resolution of Audit Findings

If resolution is determined to be required, either through a management decision process or appellate process, contract managers should be prepared to take action for failure of a contractor to complete resolution.

If a contractor fails to resolve the conditions of the audit finding, contract managers may want to consider one or more remedies or sanctions listed in [Chapter 3, Contract Provisions](#). Contract managers may consider imposing additional requirements on the contractor when the contractor fails to resolve the finding.

The contractor should be notified in writing of the nature of corrective action needed and the time allowed for completing the corrective action. If applicable, the written notification should include a description of how the contractor may request reconsideration of any additional requirements. Once the contractor completes the corrective action, any special conditions should be promptly removed from the contract.

Contract managers may want to consider terminating the contract if the contractor's failure to resolve the finding has a material effect on the contract. The termination notification to the contractor should be in writing and should be sent to the appropriate parties to the contract in accordance with the termination conditions outlined in the contract. Contract managers should provide contractors the opportunity for a hearing, an appeal or other administrative proceeding under applicable statutes or regulations when it is determined that the contractor has failed to resolve the finding.

Appendix A

Risk Assessment Tools from State Agencies

- **Risk Assessment Tools from DSHS - Pages A-1 through A-5**
 - DSHS staff uses this tool to assess risks in conjunction with monitoring contracts.
 - Contact the DSHS Central Contracts Section at (360) 664-6071 for more information.

- **Risk Assessment Tool from CTED, Office of Crime Victim Advocacy - Pages A-6 through A-15**
 - This tool is used by one unit within CTED to assess risks.
 - Contact the Office of Crime Victim Advocacy at (360) 725-2898 for more information.

RISK ASSESSMENT WORKSHEET

Service: _____

Estimated Hours per Week Available
for Contract monitoring: _____

Total # of Contracts: _____

Monitoring Activities

Activity

Who Performs this Activity?

- ☐ Contractor written self-assessment _____
- ☐ Review of contractor invoices/documentation _____
- ☐ Review of billing and payment history _____
- ☐ Review of contractor reports _____
- ☐ Social worker contact with clients _____
- ☐ Survey of clients _____
- ☐ Survey of social workers _____
- ☐ Off-site questionnaire (desk monitoring) _____
- ☐ On-site inspection or visit _____
- ☐ Review of contractor audit reports _____
- ☐ Review of contractor corrective action plans _____
- ☐ Licensing inspection _____
- ☐ Program monitoring _____
- ☐ Performance verification from other sources _____
- ☐ Review of other resources _____
- ☐ On-site visits for other than monitoring _____
- ☐ _____
- ☐ _____
- ☐ _____

Mandatory Monitoring Activities
--

Activity**Estimated Hours a Week**

<input type="checkbox"/> Review contractor invoices	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> Review contractor reports	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> Review contractor audit reports	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> Review contractor correction action plans	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> _____	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> _____	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> _____	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> _____	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> _____	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> _____	<hr style="border: 0; border-top: 1px solid black;"/>
<input type="checkbox"/> _____	<hr style="border: 0; border-top: 1px solid black;"/>

**Total hours per week
spent on mandatory monitoring**

Other Monitoring Activities

<u>Activity</u>	<u>Estimated Hours a Week</u>
<input type="checkbox"/> Review contractor written self-assessment	_____
<input type="checkbox"/> Review of billing and payment history	_____
<input type="checkbox"/> Review of contractor reports	_____
<input type="checkbox"/> Survey of clients	_____
<input type="checkbox"/> Survey of social workers	_____
<input type="checkbox"/> Off-site questionnaire (desk monitoring)	_____
<input type="checkbox"/> On-site inspection or visit	_____
<input type="checkbox"/> Review of contractor audit reports	_____
<input type="checkbox"/> Review of contractor corrective action plans	_____
<input type="checkbox"/> Program monitoring	_____
<input type="checkbox"/> Performance verification from other sources	_____
<input type="checkbox"/> Review of other resources	_____
<input type="checkbox"/> On-site visits for other than monitoring	_____
<input type="checkbox"/> _____	_____
<input type="checkbox"/> _____	_____
<input type="checkbox"/> _____	_____
<input type="checkbox"/> _____	_____
<input type="checkbox"/> _____	_____
Total hours per week spent on other monitoring activities	_____

Contractor Risk Factors

Contractor: _____

Contract #: _____

For each checked box, rate the risk factors associated with the contractor named above on a scale of 1-5, with 1 representing the lowest risk.

	<u>Risk Factor</u>	<i>(max 5 pts)</i> <u>Risk Points</u>
<input type="checkbox"/>	Contract monitoring is required by law or regulation (such as the Single Audit Act.)	_____
<input type="checkbox"/>	Contracts involving large dollar amounts (\$100,000 or more)	_____
<input type="checkbox"/>	New contractors	_____
<input type="checkbox"/>	New service	_____
<input type="checkbox"/>	Contractors with multiple government funding sources	_____
<input type="checkbox"/>	Contractors with current or past (within 2 years) performance problems	_____
<input type="checkbox"/>	Service involving care or supervision of clients	_____
<input type="checkbox"/>	High profile contractors or service	_____
<input type="checkbox"/>	Funding source does not require an audit	_____
<input type="checkbox"/>	Contractor has experienced large amount of staff turnover	_____
<input type="checkbox"/>	Contractor has not had a comprehensive site visit from any DSHS administration within the past 2 years	_____
<input type="checkbox"/>	Contractor with current or past (within 2 years) billing problems	_____
<input type="checkbox"/>	Contractor with current or past (within 2 years) audit findings	_____
<input type="checkbox"/>	_____	_____
<input type="checkbox"/>	_____	_____
Total Risk Points		_____

Risk Factors Summary

<u>Risk Factor</u>	<u># of Contracts</u>
<input type="checkbox"/> Contract monitoring is required by law or regulation (such as the Single Audit Act.)	_____
<input type="checkbox"/> Contracts involving large dollar amounts (\$100,000 or more)	_____
<input type="checkbox"/> New contractors	_____
<input type="checkbox"/> New service	_____
<input type="checkbox"/> Contractors with multiple government funding sources	_____
<input type="checkbox"/> Contractors with current or past (within 2 years) performance problems	_____
<input type="checkbox"/> Service involving care or supervision of clients	_____
<input type="checkbox"/> High profile contractors or service	_____
<input type="checkbox"/> Funding source does not require an audit	_____
<input type="checkbox"/> Contractor has experienced large amount of staff turnover	_____
<input type="checkbox"/> Contractor has not had a comprehensive site visit from any DSHS administration within the past 2 years	_____
<input type="checkbox"/> Contractor with current or past (within 2 years) billing problems	_____
<input type="checkbox"/> Contractor with current or past (within 2 years) audit findings	_____
<input type="checkbox"/> _____	_____
<input type="checkbox"/> _____	_____
<input type="checkbox"/> _____	_____

OCVA Procedure for Risk Assessment Tool (RAT)

Updated September 2003

1. A cover letter and Contractor Information Form (CIF) will be mailed to each client service contractor. For contracts on the state fiscal year of July to June, this request will be sent by July 15, of the first year of each biennium. For contracts on the federal fiscal year, the remaining contractors' requests will be sent by October 15, of the first year of the biennium. For all other remaining contracts with a different fiscal year, the request will be sent within 30-days of the date of contract execution.
2. The mailing of the cover letter and CIF will be accomplished in a coordinated, unit-wide manner.
3. The **PA** will set up a RAT database for each contractor and save it in a folder for that particular fiscal year. A new folder shall be created each fiscal year, so that past assessments, notes, and scores can be kept and reviewed. Included in the RAT file is the date the CIF was sent to the contractor, the date requested materials were returned to OCVA, and the date the RAT was completed. For shared contracts, each PC should include the date she/he completed the RAT specific to the program.
4. The PA receives the materials, records the date the materials were returned from the agency, and puts original materials in the central files for that contractor. The PA will then send an email to all PCs, listing the contractors who have sent materials in to OCVA. Individual PCs have the responsibility of gathering materials for the contractors for whom they are the coordinator.
5. Each PC completes the assessment tool and notes the score for each program. Each program should do its own assessment and scoring of shared contractors. The total score is added up and noted at the end of the tool.
6. The RAT score determines a gradation of consequences. Due to significant differences in volume and program complexity, there are two different responses.

VAWA/DVLA	SEXUAL ASSAULT
<p>LOW – Site monitoring visit is not necessary/desk monitoring sufficient. Desk monitoring is defined as: Conduct RAT, review 1 month of backup, ensure required data reports are submitted, and track spending.</p>	<p>LOW – Site monitoring visit is not necessary/desk monitoring sufficient. Desk monitoring is defined as: Conduct RAT, review 1 month of backup, ensure required data reports are submitted, and track spending.</p>

VAWA/DVLA	SEXUAL ASSAULT
<p>LOW MEDIUM – Site monitoring visit is not necessary/desk monitoring sufficient but must be conducted no later than six months after RAT.</p> <p>Desk monitoring is defined as:</p> <p>Conduct RAT, review backup for two invoices, ensures required data reports are submitted, and track spending.</p>	<p>LOW MEDIUM – Site monitoring visit is not necessary/desk monitoring sufficient.</p> <p>Desk monitoring defined as:</p> <p>Conduct RAT, review one month of backup, track spending, and conduct desk review of data reports mid-biennium.</p>
<p>HIGH MEDIUM – Requires an on-site visit within the biennium. Consultation is required if 2 or more programs scored high medium.</p>	
<p>HIGH – Action regarding this particular contract would begin immediately. That action may be to require back-up documentation or other appropriate action, to be determined with consultation of the PC with the PM. If this is a shared contract, there should be joint consultation and a joint visit might be scheduled. An on-site monitoring visit would be more extensive and occur within nine months. If two or more programs score high, then consultation between PCs must occur, and a joint site visit may be appropriate.</p>	

7. It is expected that this entire process will be coordinated amongst all programs and staff of OCVA. It is expected that site visit scheduling is shared and coordinated amongst all OCVA staff and programs. Contractors should not be asked for the same information multiple times or from multiple sources. Contractors should not be asked for information we have at hand or have access to within our own information systems.
- ★ Each PC has a list of shared contracts in order to determine which of her/his contracts may require consultation/input of other PCs within the unit during the RAT process.

Contractor Information Form

Agency: _____ **Date:** _____
Form Completed by: _____ **Phone:** _____

Please include the following information when completing this form:

- Copies of minutes from your three most recent Board of Directors' Meetings
- The agency's most recent annual report

Agency Funding

What is your approximate annual program budget for (including all funding sources):

Sexual Assault Services: _____

Domestic Violence Services: _____

How much federal funding does your agency receive annually? _____

In the past two years, has the agency expanded services or created new services?

☐ YES ☐ NO

If yes, please describe: _____

If yes, what new or existing resources support this expansion in services?

In the past two years, has the agency downsized? ☐ YES ☐ NO

If yes, please describe: _____

Has the agency had any contracts terminated in the past two years? ☐ YES ☐ NO

If yes, please describe: _____

Please list funding sources other than OCVA who monitor contracts or conduct site visits with your agency:

Is your agency subject to an audit? ☐ YES ☐ NO

If yes, have there been any audit findings or exceptions in the last five years? ☐ YES ☐ NO

If yes, please describe: _____

Please describe any audit findings that remain *unresolved*: _____

Does your agency (if not required) get an audit, and if so, how often? ☐ YES ☐ NO

How often? _____

Agency Staff and Volunteers

How many volunteers currently support your agency? _____

Please describe the role of volunteers in your agency: _____

Please list any new agency management staff (and their positions) who have joined the agency since July 1, 2002:

APPENDIX A

Please list any new program staff who have joined the agency since July 1, 2002:

Please list any positions that are currently vacant within your agency:

Has the agency recently restructured?

☐ YES

☐ NO

If yes, please describe:

Policy and Legal Issues

Is there any litigation pending against the agency?

☐ YES

☐ NO

If yes, please describe:

I attest that the above is true and correct:

Signature

Date

OCVA Risk Assessment Tool

(Revised May 2003)

Agency: _____

Date Contractor Information Form (CIF) Sent: _____

Date CIF Materials Returned to OCVA: _____

	Answers	Points	DVLA	SA	STOP
How many months since last routine site visit?	12 mo	0 pt			
(program or fiscal?)	24 mo	5pt			
	36 mo	10 pt			
Were concerns raised after the last routine site visit?	Yes	10 pt			
	No	0 pt			
If there were concerns raised, were they addressed by the contractor satisfactorily?	Yes	0 pt			
	No	10 pt			
Is there any undecided litigation pending against the contractor?	Yes	10 pt			
	No	0 pt			
Are we the only entity that monitors contracts?	Yes	10 pt			
	No	0 pt			
Is quarterly or monthly data submitted in a timely manner?	Almost always	0 pt			
	Sometime	5 pt			
	Rarely	10 pt			
Is data complete, accurate, filled out correctly?	Almost always	0 pt			
	Sometime	5 pt			
	Rarely	10 pt			
Is the organization subject to accreditation requirements?	Yes	0 pt			
	No	10 pt			
Has the organization had any difficulty obtaining accreditation, if required?	Pass	0 pt			
	Provisional to full	10 pt			
	Low to provisional	15 pt			
	Fail	20 pt			
Does the agency sub-contract for services?	No	0 pt			
	1-2 Subcontracts	5 pt			
	3+ Subcontracts	10 pt			
Are volunteers involved in the delivery of the program?	No	0 pt			
	Yes	10 pt			

APPENDIX A

	Answers	Points	DVLA	SA	STOP
How many contractor-initiated amendments have been made	0 – 1	0 pt			
during the contract period?	2 – 3	5 pt			
	3 +	10 pt			
Have responses to OCVA correspondence and requests for	Almost always	0 pt			
Information been timely and complete?	Sometime	5 pt			
(Including RFQ/P/Application deadlines and thoroughness)	Rarely	10 pt			
Has there been prior history of contract compliance issues?					
If the contractor has had any of the following actions, assign the					
Points corresponding to the action:					
1. Correspondence (reminding of late vouchers, data)		5 pt			
2. Corrective action (asking for more info, back-up, etc.)		10 pt			
3. Suspension of vouchers (holding vouchers because of		15 pt			
no response to 1 or 2 above)					
4. Probation		20 pt			
How often has there been contractor-initiated communication,	Frequently	10 pt			
indicating a lack of understanding of contract	Occasionally	5 pt			
requirements?	Rarely	0 pt			
Has there been excessive turnover of agency management?	< 1% in 24 mo	0 pt			
(i.e., executive director, accounting staff, etc.)	1-40% in 24 mo	5 pt			
	> 40% in 24 mo	10 pt			
Has there been excessive turnover of program staff?	< 1% in 24 mo	0 pt			
(i.e., program director, advocates, other direct service	1-33% in 24 mo	5 pt			
Staff, clerical staff?)	> 33% in 24 mo	10 pt			
Has the organization experienced any recent major	No	0 pt			
restructuring?	Yes	5 pt			
Does the board take an active role in directing the organization,	High	0 pt			
establishing management policies and procedures and	Medium	5 pt			
monitoring the organization's financial and	Low	10 pt			
programmatic performance?					
What is the total amount of this contract?	< \$25,000	0 pt			
	\$25 – 100,000	5 pt			
	> \$100,000	10 pt			
What level of experience does the contractor have with	6+ yrs	0 pt			
OCVA contracts?	2-6 yrs	5 pt			
	0-2 yrs	10 pt			

	Answers	Points	DVLA	SA	STOP
Does this agency have multiple contracts with OCVA?	No	0 pt			
	Yes	5 pt			
If so, have there been problems or difficulties with any of the other programs?	No	0 pt			
	Yes	10 pt			
How would you rate their voucher history?	Excellent	0 pt			
(complying with voucher requirements, including	Good	5 pt			
timelines, and accuracy)	Poor	10 pt			
Does the agency bill the contract monthly by 1/12 th ?	No	0 pt			
	Yes	10 pt			
Does this contract represent a significant portion of the total program funding?	< 11%	0 pt			
(what is the percentage?)	11 – 49%	5 pt			
	> 50%	10 pt			
Is the entity subject to an audit?	Yes	0 pt			
	No	20 pt			
Have there been any audit findings or exceptions in the last five years?	Yes	5 pt			
	No	0 pt			
Are there any unresolved audit issues?	Yes	5 pt			
	No	0 pt			
Has the organization had any contracts terminated in the past two years?	Yes	15 pt			
	No	0 pt			

Range:

- 0 – 79 - Low
80 – 157 - Low Medium
158 – 235 - High Medium
236 – 315 - High

--	--	--	--	--

TOTAL RISK ASSESSMENT

Date RAT completed: _____

APPENDIX A

Here are some additional questions/concerns to share with each other. Add additional areas of concern, when applicable.

Are there any known conflicts between the Board and the staff?

Are there any known conflicts between the Director and the other staff members?

Are there any concerns about the quality or quantity of services being provided?

Are the concerns of such a magnitude that it warrants consideration of additional language in the statement of work, in order to be sure that quality services are being provided to victims or to be a better steward of public funds? If so, explain your rationale. (If PC is making recommendations here, there should also be consultation with the program manager.

Additional notes (this could include program events, positive observations, etc.)

Appendix B

List of Newspapers and Minority Publications

- This list can be used when publishing competitive procurement announcements for client service contracts.

List of Newspapers and Minority Publications

An abbreviated list of daily and weekly publications is included for reference:

Daily Journal of Commerce
PO Box 11050
Seattle, WA 98111
Phone: (206) 622-8272
FAX: (206) 622-8416
E-mail: legals@dj.com

Seattle Post Intelligencer
PO Box 1909
Seattle, WA 98111-1909
Phone: (206) 448-8000
FAX: (206) 515-5595

Seattle Times
PO Box 70
Seattle, WA 98111
Phone: (206) 464-2111
FAX: (206) 515-5566

Spokesman Review
PO Box 2160
Spokane, WA 99210
Phone: (509) 456-7355
FAX: (509) 459-5156

News Tribune
PO Box 11000
Tacoma, WA 98411
Phone: (253) 597-8742
FAX: (253) 552-7042

Yakima Herald-Republic
114 N 4th Street
PO Box 9668
Yakima, WA 98901
Phone: (509) 577-7741
(800) 343-2799
FAX: (509) 577-7766
E-mail: legals@yakima-herald.com

Wenatchee World
14 N Mission Street
PO Box 1511
Wenatchee, WA 98807
Phone: (509) 663-5161
FAX: (509) 665-1182

The Columbian
PO Box 180
Vancouver, WA 98666-0180
Phone: (360) 694-3391
(800) 743-3391
FAX: (360) 699-6033

Tri-City Herald
PO Box 2608
Tri-Cities, WA 99302
Phone: (509) 586-6181
(800) 874-0445
FAX: (509) 582-1453

Minority newspapers include:

The Skanner
PO Box 94473
Seattle, WA 98124
Phone: (206) 233-9888
E-mail: seattle@theskanner.com

The Seattle Medium
2600 S Jackson Street
Seattle, WA 98144
Phone: (206) 323-3070
FAX: (206) 322-6518

Seattle Chinese Post/NW Asian Weekly
412 Maynard Avenue S
PO Box 3468
Seattle, WA 98114
Phone: (206) 223-5559
FAX: (206) 223-0626

Appendix C

Financial Assessment Tool from DSHS

- **Financial Assessment Questionnaire - Pages C-1 through C-4**
 - The DSHS staff uses this form to assess the financial health and stability of contractors.
 - Contact the DSHS Office of Financial Recovery at (360) 664-5700 for more information.



FINANCIAL ASSESSMENT QUESTIONNAIRE INSTRUCTIONS

The responses given on this form are used to verify your business information. Immediately return the completed form to the initiating program to ensure prompt attention. The questionnaire has ten (10) sections. The following instructions provide a brief description of the information needed in each section. If you need additional space for your responses use the back of this form or add additional paper. If you have any questions, contact the Office of Financial Recovery at the telephone numbers listed at the bottom of this page.

- 1. Business Information:** Indicate the full and legal name as registered with the state of Washington of the sole proprietor, partnership, Limited Liability Company, corporation, association, nonprofit organization, etc. Also list the name you are doing business as (dba). Include both the mailing and street address. If associated with any other organization, list the legal business name(s). If the business leases the property, include the name and address of the legal property owner. If the real property is owned by the business, include the purchase price, monthly payment, and any lien holder.
- 2. Sole Proprietor/Business Partners/Corporate Officers/Board of Directors:** Enter the name, address, and Social Security Number (SSN) of these individuals. Disclosure of Social Security Numbers (SSNs) is governed by the Social Security Act and is voluntary. When you provide SSNs for those individuals directing business operations, DSHS can assess information that is helpful in making appropriate contracting decisions. The potential impact of services to vulnerable clients cannot be determined without evidence of these identification numbers. No SSN will be disclosed outside DSHS.

Note: Non-profit organizations do not need to include information from Board members who do not exercise control of daily operations.
- 3. Administrator/Business Manager:** Enter the name, address, date of birth, and Social Security Number of those individuals who direct the daily operations of your organization.
- 4. Business References:** List at least three business names, addresses, and telephone numbers that you purchase goods or services from on open accounts.
- 5. Bank References:** Include the location address, type of account, and account number for each reference you list. Assets: Estimate the amount of cash available for daily operations. If the business owns real estate, list the tax assessed value. The value of accounts receivable is the amount of money your client currently owes you.
- 6. Outstanding Accounts Payable (Liabilities):** Include the original balance, current balance, and the monthly payment, of the debts owed. If any loans are secured by real estate, personal property, etc., please mark yes or no.
- 7. Other Information:** Check Yes or No for the business and individuals for each question. Include the persons listed in Sections 2 and 3 of this questionnaire. If the answer to any of these questions is yes, please explain. You may attach a separate sheet of paper if needed.
- 8. Ethics, State Employee Compliance:** Chapter 42-52 RCW, Ethics in Public Service, makes a strong statement of ethical principles and values for state officers and employees: "*State officers and state employees of government hold a public trust which obligates them, in a special way, to honestly and with integrity fulfill the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office-whether elected or appointed-may not be used for personal gain or private advantage.*" If the answer is yes to these questions, list the requested information.
- 9. Applicant's Signature:** Only an authorized or designated person is to sign this questionnaire.

Department of Social and Health Services
Office of Financial Recovery
Financial Assessments - Vendor Programs Unit
(360) 664-5700 (Olympia)
1-800-562-6114 (Toll Free)
1-800-833-6388 (TTY - Hearing Impaired)

APPENDIX C



FINANCIAL ASSESSMENT QUESTIONNAIRE

			FEDERAL ID OR SSN
			UBI #
LIST THE DSHS PROGRAM OFFICE WITH WHICH YOU ARE PROPOSING TO CONTRACT		CONTACT PERSON	TELEPHONE NUMBER
1. BUSINESS INFORMATION			
LEGAL BUSINESS NAME	STREET ADDRESS		HOW LONG IN CURRENT BUSINESS
DOING BUSINESS AS (DBA)			TELEPHONE NUMBER
MAILING ADDRESS	IS THIS BUSINESS A DIVISION, BRANCH, SUBSIDIARY OF ANOTHER COMPANY? IF SO, LIST NAMES OF THOSE COMPANIES.		
FORM OF BUSINESS (CORPORATION, PARTNERSHIP, SOLE PROPRIETOR, LIMITED LIABILITY COMPANY)			NUMBER OF EMPLOYEES
DO YOU <input type="checkbox"/> OWN <input type="checkbox"/> RENT/LEASE	PAYMENT AMOUNT	LANDLORD OR LIEN HOLDER NAME/ADDRESS	TELEPHONE NUMBER
2. LIST NAME AND POSITION OF SOLE PROPRIETOR/BUSINESS PARTNERS/CORPORATE OFFICERS/BOARD OF DIRECTORS			
NAME/POSITION	HOME ADDRESS/DAYTIME TELEPHONE	SOCIAL SECURITY NUMBER	DATE OF BIRTH
a.			
b.			
c.			
d.			
e.			
f.			
3. ADMINISTRATOR/ BUSINESS MANAGER	HOME ADDRESS/DAYTIME TELEPHONE	SOCIAL SECURITY NUMBER	DATE OF BIRTH
4. BUSINESS REFERENCES (NAME)	ADDRESS/TELEPHONE	HOW LONG KNOWN	
a.			
b.			
c.			
d.			

5. BANK REFERENCES	ADDRESS/TELEPHONE NUMBER		TYPE OF ACCOUNT	ACCOUNT NUMBER
a. CONTACT:				
b. CONTACT:				
c. CONTACT:				
d. CONTACT:				
e. CONTACT:				
f. CONTACT:				
6. ASSETS				
TOTAL OPERATING CASH ON HAND			IF PROPERTY OWNED, TOTAL TAX ASSESSED VALUE	
INCOME FROM OTHER SOURCES (EXPLAIN)			VALUE OF ACCOUNTS RECEIVABLE	
7. OUTSTANDING ACCOUNTS PAYABLE				
WHOM DO YOU OWE?	ORIGINAL BALANCE	CURRENT BALANCE	MONTHLY PAYMENT	IS THIS DEBT SECURED?
a.				<input type="checkbox"/> YES <input type="checkbox"/> NO
b.				<input type="checkbox"/> YES <input type="checkbox"/> NO
c.				<input type="checkbox"/> YES <input type="checkbox"/> NO
d.				<input type="checkbox"/> YES <input type="checkbox"/> NO
e.				<input type="checkbox"/> YES <input type="checkbox"/> NO
f.				<input type="checkbox"/> YES <input type="checkbox"/> NO
g.				<input type="checkbox"/> YES <input type="checkbox"/> NO
h.				<input type="checkbox"/> YES <input type="checkbox"/> NO
8. OTHER INFORMATION				
TYPE OF ACTION	BUSINESS ENTITY		SOLE PROPRIETOR/PARTNERS/CORPORATE OFFICERS/BOARD OF DIRECTORS/MANAGER/ADMINISTRATOR	
a. Tax liens filed against (within last 10 years)	<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:		<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:	
b. Lawsuits filed against (within last 10 years)	<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:		<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:	
c. Filed Bankruptcy (within last 10 years)	<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:		<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:	
d. Failed to complete a contractual obligation (within last 10 years)	<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:		<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:	
e. Any business failure (within last 10 years)	<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:		<input type="checkbox"/> YES <input type="checkbox"/> NO EXPLAIN:	

APPENDIX C

9. ETHICS LAW REQUIREMENTS

Current State Employee. Is the Contractor or any of the Contractor's directors, employees who will perform work under a contract between the Contractor and DSHS, managers, members, officers, and/or partners a current State of Washington employee?

☐ YES ☐ NO

If yes, list their names, agency, positions, and dates of employment with the state of Washington.

Former State Employees. Is the Contractor or any of the Contractor's directors, employees who will perform work under a contract between the Contractor and DSHS, managers, members, officers, and/or partners a past State of Washington employee?

☐ YES ☐ NO

If yes, list their names, agency positions, and dates of employment with the state of Washington.

10. APPLICANT'S CERTIFICATION AND AUTHORIZATION

I hereby certify, with my signature, that the information in this questionnaire is true and accurate. My signature also authorizes the Department of Social and Health Services (DSHS) to check the credit of the corporation or business and its principals; to obtain a credit report; and to verify any responses provided. DSHS and its contracting process will use such information and may disclose this information to other parts of DSHS as appropriate to further program purposes. DSHS may define some or all of such information as public information and also disclose this information to third parties when requested according to law to the extent that such information is not exempt from such disclosure by state or federal law.

AUTHORIZED SIGNATURE

DATE

TITLE

DSHS 23-023 (rev. 07/1999)

Appendix D

Model Client Service Contract

- This serves as a model Client Service Contract only and is intended to assist agencies with examples of contract language. Agency contract managers are responsible for ensuring contract language meets their agency needs.
- The Office of the Attorney General should approve contracts as to form. Some state agencies have a centralized contracts function that handles this process for agency staff. Some agencies use “boilerplate” contracts that have been reviewed and approved by their Assistant Attorney General (AAG).
- This model contract also includes an addendum to be used when applicable under HIPAA.

NOTE: *The sections of this contract labeled “NOTE:” are not to be included in the contract, but are for contract managers’ information.*

CONTRACT NO. _____

**CLIENT SERVICE CONTRACT
BETWEEN
STATE OF WASHINGTON**

AND

This contract is made and entered into by and between the state of Washington, _____, hereinafter referred to as the "DEPARTMENT", and the below named firm, hereinafter referred to as "CONTRACTOR,"

Contractor Name: _____

Address: _____

City, State, Zip-Code: _____

Phone: _____ Fax: _____

E-mail: _____

Washington State UBI Number: _____

Federal ID Number: _____

PURPOSE

The purpose of this contract is to:

Special Terms and Conditions**SCOPE OF WORK**

- A. The CONTRACTOR will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:
- Option 1: Identify all tasks, work elements and objectives of the contract, and timetables by which major parts of the work are to be completed. The Scope of Work may be included within the text of the contract or attached as a separate exhibit as shown in Option 2 below.
- Option 2: As and included in the CONTRACTOR'S Response, dated _____, to the Department's procurement documents attached as Exhibit B and Exhibit C, respectively.
- B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the DEPARTMENT and the CONTRACTOR, and specific obligations of both parties.

APPENDIX D

- C. The CONTRACTOR shall produce the following written reports or other written documents (deliverables) by the dates indicated below:

All written reports required under this contract must be delivered to _____, the contract manager, in accordance with the schedule above.

PERIOD OF PERFORMANCE

Subject to other contract provisions, the Period of Performance under this contract will be from _____ through _____.

COMPENSATION/ PAYMENT

DEPARTMENT shall pay an amount not to exceed _____ (\$ _____) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

NOTES:

1. *List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. or reference documents that specify CONTRACTOR's compensation and payment, e.g., CONTRACTOR's compensation for services rendered shall be based on the schedule set forth in Exhibit B, Fees and Expenses.*
2. *Identify federal and state dollar amounts when relevant reporting requirements apply.*

EXPENSES

NOTE: Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses that are appropriate for the contract.

CONTRACTOR shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by the DEPARTMENT as reimbursable. The maximum amount to be paid to the CONTRACTOR for authorized expenses shall not exceed \$_____, which amount is included in the contract total above Paragraph A, "Amount of Compensation". Such expenses may include: airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. CONTRACTOR shall receive compensation for travel expenses at current state travel reimbursement rates. To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the contract, payment at conclusion of the contract, etc.

DEPARTMENT will pay CONTRACTOR upon receipt of properly completed invoices, which shall be submitted to the contract manager not more often than monthly. The invoices shall describe and document, to the DEPARTMENT'S satisfaction, the work performed, the progress of the project, and fees.

NOTE: Add this language if expenses are allowed. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expense exceeding \$50.00 in order to receive reimbursement.

Payment shall be considered timely if made by the DEPARTMENT within thirty (30) days after receipt of properly completed invoices. Payment shall be sent to the address designated by the CONTRACTOR.

The DEPARTMENT may, in its sole discretion, terminate the contract or withhold payments claimed by the CONTRACTOR for services rendered if the CONTRACTOR fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the DEPARTMENT.

The DEPARTMENT shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were performed.

DUPLICATION OF BILLED COSTS: The CONTRACTOR shall not bill the DEPARTMENT for services performed under this contract, and the DEPARTMENT shall not pay the CONTRACTOR, if the CONTRACTOR is entitled to payment or has been or will be paid by any other source, including grants, for that service.

DISALLOWED COSTS: The CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

NOTE: Optional Provision - The DEPARTMENT shall withhold ten percent (10%) from each payment until acceptance by the DEPARTMENT of the final report (or completion of the project, etc.)

Optional Provision - The CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

CONTRACT MANAGEMENT

The contract manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this contract.

Contract Manager for CONTRACTOR is:	Contract Manager for DEPARTMENT is:
<i>Contractor Name</i>	<i>Department Name</i>
<i>Address</i>	<i>Address</i>
<i>City, State, Zip-Code</i>	<i>City, State, Zip-Code</i>
<i>Phone</i> <i>FAX</i>	<i>Phone</i> <i>FAX</i>
<i>E-mail</i>	<i>E-mail</i>

INSURANCE

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subcontractor or agents of either, while performing under the terms of this contract.

APPENDIX D

The insurance required shall be issued by an insurance company(s) authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees, as additional insureds under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give DEPARTMENT 30-days advance notice of any insurance cancellation.

CONTRACTOR shall submit to DEPARTMENT within 15-days of the contract effective date, a certificate of insurance, which outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the contract.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this contract, as follows:

Commercial General Liability Insurance Policy - Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Automobile Liability - In the event that services delivered pursuant to this contract involve the use of vehicles, owned or operated by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is:

\$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

Professional Liability, Errors and Omissions Insurance - The CONTRACTOR shall maintain Professional Liability or Errors and Omissions Insurance. The CONTRACTOR shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all program activities by the CONTRACTOR and licensed staff employed or under contract to the CONTRACTOR. The state of Washington, its agents and employees need *not* be named as additional insureds under this policy.

The required insurance shall be issued by an insurance company(s) authorized to do business within the state of Washington, and except for Professional Liability or Errors and Omissions Insurance, shall name the state of Washington, its agents and employees as additional insureds under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. The CONTRACTOR shall instruct the insurers to give the DEPARTMENT 30-days advance notice of any insurance cancellation.

NOTE: The insurance provisions may be waived or modified to fit the specific needs of the DEPARTMENT and the CONTRACTOR. It is very important to consult with agency staff familiar with insurance requirements when deciding insurance language to be included in contracts.

ASSURANCES

DEPARTMENT and the CONTRACTOR agree that all activity pursuant to this contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

ORDER OF PRECEDENCE

Each of the exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations;
- Special Terms and Conditions as contained in this basic contract instrument;
- Exhibit A – General Terms and Conditions;
- Exhibit B – Contractor's Proposal;

- Exhibit C – Procurement No. _____; and
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

ENTIRE AGREEMENT

This contract, including referenced exhibits, represents all the terms and conditions agreed upon by the parties. No other understandings or representations oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

APPROVAL

This contract shall be subject to the written approval of the DEPARTMENT'S authorized representative and shall not be binding until so approved. The contract may be altered, amended or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of _____ pages and _____ attachments, is executed by the persons signing below who warrant that they have the authority to execute the contract.

[CONTRACTOR'S NAME]

[DEPARTMENT NAME]

Signature

Signature

Title

Date

Title

Date

APPROVED AS TO FORM:

Assistant Attorney General

Date

- NOTES:
1. *The signature blocks on the contract must not appear on a page by themselves. Some of the text of the contract should be included at the top of the page.*
 2. *Approval as to form is not required on every contract, once the contract format has been approved by the Attorney General's Office.*

EXHIBIT A

GENERAL TERMS AND CONDITIONS

DEFINITIONS - As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) "Client" shall mean an individual receiving services under this contract.
- (b) "Cognizant State Agency" shall mean the state agency from which the sub-recipient receives federal financial assistance. If funds are received from more than one state agency, the cognizant state agency shall be the agency who contributes the largest portion of federal financial assistance to the sub-recipient.
- (c) "Contractor" shall mean that agency, firm, provider organization, individual or other entity performing services under this contract. It shall include any subcontractor retained by the prime contractor as permitted under the terms of this agreement.
- (d) "Contracting Officer" shall mean that individual authorized to execute this agreement on behalf of the Department.
- (e) "Department" shall mean the _____ of the state of Washington, any division, section, office, unit or other entity of the Department or any of the officers or other officials lawfully representing that department.
- (f) "Personal Information" means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- (g) "Subcontractor" shall mean one not an employee of the contractor, who is performing all or part of those services under this contract under a separate contract with the contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.
- (h) "Subrecipient" shall mean a non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.
- (i) A "Vendor" is an entity that agrees to provide the amount and kind of services requested by the Department; provides services under the contract only to those beneficiaries individually determined to be eligible by the Department and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 -- The contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT – Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the contractor without prior written consent of the Department.

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY - If federal funds are the basis for this contract, the contractor certifies that neither it nor its principals are presently debarred, declared ineligible or voluntarily excluded from participation in transactions by any federal department or agency.

CHANGE IN STATUS – In the event of substantive change in the legal status organizational structure or fiscal reporting responsibility of the contractor, contractor agrees to notify the Department of the change. Contractor shall provide notice as soon as practicable, but no later than thirty days after such a change takes effect.

CHANGES AND MODIFICATIONS - The contracting officer may, at any time, by written notification to the contractor, and without notice to any known guarantor or surety, make changes within the general scope of the services to be performed under the contract. If the contractor agrees to such changes, a written contract amendment reflecting such change shall be executed by the parties. An equitable adjustment in cost or period of performance or both may be made if required by the change. Any claim for adjustment in price or period of performance must be received within thirty (30) days of the contractor's receipt of the change notice.

The contracting officer may, however, receive and act upon any such claim at any time prior to final payment under the contract at his/her discretion.

Failure to agree to any adjustment made under this section shall be an issue and may be reviewed as provided in the "Disputes" section of this agreement. Nothing in this section shall excuse the contractor from proceeding with the contract as changed.

CONFLICT OF INTEREST – The Department may, in its sole discretion, by written notice to the contractor, terminate this contract if it finds, after due notice and examination by the contracting Officer, that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the contractor in the procurement of or performance under, this contract.

In the event this contract is terminated as provided above, the Department shall be entitled to pursue the same remedies against the contractor as it could pursue in the event of a breach of the contract by the contractor. The rights and remedies of the Department provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the contracting officer makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

COVENANT AGAINST CONTINGENT FEES – The contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agent maintained by the contractor for the purpose of securing business. The Department shall have the right, in the event of breach of this clause by the contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fees.

DISPUTES

Option 1 - Dispute Resolution Board

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, any party may request a dispute resolution board (DRB). A request for a DRB must be in writing, state the disputed issue(s), state the relative positions of the parties and be sent to all parties. Parties must provide a response within [] days. Once a party requests a DRB, each party shall designate a representative. The representatives shall mutually select a third member (or an additional member for disputes involving more than 2 parties). The DRB shall evaluate the facts, contract terms and applicable statutes and rules and make a determination by majority vote. The decision **(OPTION 1) [is binding on all parties] OR**

(OPTION 2) [shall/shall not be admissible in any succeeding judicial or quasi-judicial proceeding concerning the Contract. Parties agree that the DRB shall proceed with any action in a judicial or quasi-judicial tribunal.]

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable ADR method in addition to the dispute resolution procedure outlined above.

APPENDIX D

Option 2 - Dispute Hearing

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the **[Agency/Director of Agency or his or her designee]**.

1. The request for a dispute hearing must:
 - Be in writing;
 - State the disputed issues;
 - State the relative positions of the parties;
 - State the contractor's name, address, and contract number; and
 - Be mailed to the agent and the other party's (respondent's) contract manager within 3 working days after the parties agree that they cannot resolve the dispute.
2. The respondent shall send a written answer to the requestor's statement to both the agent and the requestor within 5 working days.
3. The agent shall review the written statements and reply in writing to both parties within 10 working days. The agent may extend this period if necessary by notifying the parties.
4. The decision **[shall/shall not be]** admissible in any succeeding judicial or quasi-judicial proceeding.
5. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Option 3 - Mediation

Except as otherwise provided in this contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, the parties agree to participate in mediation in good faith. The mediator shall be chosen by agreement of the parties. If the parties cannot agree on a mediator, the parties shall use a mediation service that selects the mediator for the parties. The parties agree that mediation shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this contract shall be construed to limit the parties' choice of a mutually acceptable alternative resolution method such as a disputes hearing, a dispute resolution board or arbitration.

GOVERNING LAW - This contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in Superior Court for Thurston County.

NOTE: The County may change depending on the location of services.

Option 1 - Intermediate version

INDEMNIFICATION – To the fullest extent permitted by law, contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractor's obligations to indemnify, defend, and hold harmless includes any claim by contractors' agents, employees, representatives or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the state shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

Option 2 - Limited version

To the fullest extent permitted by law, contractor shall indemnify, defend and hold harmless the state, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. Contractor's obligations to indemnify, defend, and hold harmless includes any claim by contractors' agents, employees, representatives or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the state for any claim arising out of or incident to contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the state only to the extent claim is caused in whole or in part by negligent acts or omissions of contractor.

Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

Option 3 - Mutual version

Each party to this agreement shall be responsible for its own acts and/or omissions and those of its officers, employees and agents. No party to this agreement shall be responsible for the acts and/or omissions of entities or individuals not a party to this agreement.

NOTE: The Office of Financial Management, Risk Management Division, has been responsible for developing recommendations on risk management. They generally recommend using the intermediate language in most contracts. The limited language is more often used in public works contracts. However, it may also be used at a Contractor's insistence, after the agency has evaluated its risks and determined if a limited indemnification and hold harmless clause is acceptable. The alternate indemnity clause makes each party responsible for its own actions.

INDEPENDENT CAPACITY – The parties intend that an independent contractor relationship will be created by this contract. The contractor and his or her employees or agents performing under this contract are not employees or agents of the Department. The contractor will not hold himself/herself out as nor claim to be an officer or employee of the Department or of the state of Washington by reason hereof, nor will the contractor make any claim of right, privilege or benefit that would accrue to such employee under law. Conduct and control of the work will be solely with the contractor.

INDUSTRIAL INSURANCE COVERAGE - The contractor shall comply with the provisions of Title 51 RCW, Industrial Insurance. If the contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the Department may collect from the contractor the full amount payable to the Industrial Insurance accident fund. The Department may:

- Deduct the amount owed by the contractor to the accident fund from the amount payable to the contractor by Department under this contract; and
- Transmit the deducted amount to the Department of Labor and Industries (L&I), Division of Insurance Services.

This provision does not waive any of L&I's rights to collect from the contractor.

NOTE: In those instances where the Contractor meets the definition of "worker" under RCW 51.08.180 and 51.08.195, the Department of Labor and Industries suggests the following alternative language:

The Agency acknowledges that the essence of the work specified in this contract constitutes personal labor, thus making the contractor a covered "worker" as defined in Title 51 RCW. The Agency therefore agrees to provide industrial insurance coverage for the contractor during the course of employment under this contract, as may be required under Title 51 RCW.

APPENDIX D

LICENSING AND ACCREDITATION STANDARDS - The contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary in the performance of this contract.

LIMITATION OF AUTHORITY - Only the contracting officer or his/her delegate by writing (delegation to be made prior to action) shall have the express, implied or apparent authority to alter, amend, modify or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the contracting officer.

NONDISCRIMINATION – During the performance of this contract, the contractor shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the contractor may be declared ineligible for further contracts with the Department. The contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

OVERPAYMENTS AND ASSERTION OF LIEN - In the event that the Department establishes overpayments or erroneous payments made to the contractor under this contract, the Department may secure repayment, plus interest, if any, through the filing of a lien against the contractor's real property or by requiring the posting of a bond, assignment of deposit or some other form of security acceptable to the Department or by doing both.

PRIVACY - Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this contract. Contractor and its subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the agency or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The Department reserves the rights to monitor, audit or investigate the use of personal information collected, used or acquired by the contractor through this contract. The monitoring, auditing or investigating may include but is not limited to "salting" by the Department. Contractor shall certify the return or destruction of all personal information upon expiration of this contract. Salting is the act of placing a record containing unique but false information in a database that can be used later to identify inappropriate disclosure of data contained in the database.

Any breach of this provision may result in termination of the contract and the demand for return of all personal information. The contractor agrees to indemnify and hold harmless the Department for any damages related to the contractor's unauthorized use of personal information.

For the purposes of this provision, personal information includes but is not limited to information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

RECORDS, DOCUMENTS, AND REPORTS – The contractor shall maintain all books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by the Department, personnel duly authorized by the Department, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE - The contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

RIGHT OF INSPECTION - The contractor shall provide right of access to its facilities to the Department or any of its officers at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract on behalf of the Department. All inspections and evaluations shall be performed in such a manner that will not unduly interfere with the contractor's business or work hereunder.

RIGHTS IN DATA - Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the Department. Data shall include, but not be limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

Data that is delivered under the contract, but which does not originate there from, shall be transferred to the Department with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; Provided, that such license shall be limited to the extent which the contractor has a right to grant such a license. The contractor shall exert all reasonable effort to advise the Department, at the time of delivery of data furnished under this agreement, of all known or potential invasions of privacy contained therein and of any portion of such document, which was not produced in the performance of this agreement. The Department shall receive prompt written notice of each notice or claim or copyright infringement received by the contractor with respect to any data delivered under this agreement. The Department shall have the right to modify or remove any restrictive markings placed upon the data by the contractor.

SAFEGUARDING OF INFORMATION - The contractor shall not use or disclose any:

- Personal Information gained by reason of this contract or
- Information that may be classified as confidential for any purpose not directly connected with the administration of this contract except (1) with prior written consent of the Department or (2) as may be required by law. The contractor shall safeguard such information and shall return or certify destruction of the information upon contract expiration or termination.

SAVINGS - In the event funding from state, federal or other sources is withdrawn, reduced or limited in any way after the effective date of this contract and prior to normal completion, the Department may terminate the contract under the "Termination for Convenience" clause, without advance notice, subject to renegotiation at the Department's discretion under those new funding limitations and conditions.

SEVERABILITY - If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this contract, and to this end the provisions of this contract are declared to be severable.

SINGLE AUDIT ACT REQUIREMENTS -- If the contractor is a subrecipient of federal awards as defined by Office of Management and Budget (OMB) Circular A-133, the contractor shall maintain records that identify all federal funds received and expended. Such funds shall be identified by the appropriate OMB Catalog of Federal Domestic Assistance Numbers. The contractor shall make the contractor's records available for review or audit by officials of the federal awarding agency, the General Accounting Office, the Department, and the Washington State Auditor's Office. The contractor shall incorporate OMB Circular A-133 audit requirements into all contracts between the contractor and its Subcontractors who are subrecipients. The contractor shall comply with any future amendments to OMB Circular A-133 and any successor or replacement Circular or regulation.

If the contractor expends \$500,000 or more in federal awards from any and/or all sources in any fiscal year ending after December 31, 2003, the contractor shall procure and pay for a single or program-specific audit for that year.

APPENDIX D

Upon completion of each audit, the contractor shall submit to the contracting officer named in this contract the data collection form and reporting package specified in OMB Circular A-133, reports required by the program-specific audit guide (if applicable).

NOTE: The single audit requirements above do not apply to "vendors" (as defined in this contract) who provide goods or services.

SUBCONTRACTING - Neither the contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Department. In no event shall the existence of the subcontract operate to release or reduce the liability of the contractor to the Department for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the contractor and personnel assigned to work under this contract.

TERMINATION FOR CONVENIENCE - Except as otherwise provided in this contract, the contracting officer may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this contract in whole or in part. If this contract is so terminated, the Department shall be liable only for payment required under the terms of this contract for services rendered or goods delivered prior to the effective date of termination.

TERMINATION FOR DEFAULT - The contracting officer may terminate this contract for default, in whole or in part, by written notice to the contractor if the Department has a reasonable basis to believe that the contractor has:

- Failed to meet or maintain any requirement for contracting with the Department;
- Failed to ensure the health or safety of any client for whom services are being provided under this contract;
- Failed to perform under or otherwise breached, any term or condition of this contract; and/or
- Violated any applicable law or regulation.

If it is later determined that the contractor was not in default, the termination shall be considered a termination for convenience.

TERMINATION PROCEDURE - Upon termination of this contract, the Department, in addition to any other rights provided in this contract, may require the contractor to deliver to the Department any property specifically produced or acquired for the performance of such part of this agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Department shall pay to the contractor the agreed upon price, if separately stated, for completed work and services accepted by the Department and the amount agreed upon by the contractor and the contracting officer for (a) completed work and services for which no separate price is stated, (b) partially completed work and services, (c) other property or services that are accepted by the Department, and (d) the protection and preservation of the property, unless the termination is for default, in which case the contracting officer shall determine the extent of the liability of the Department. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this agreement.

The Department may withhold from any amounts due the contractor for such completed work or services such sum as the contracting officer determines to be necessary to protect the Department against potential loss or liability.

The rights and remedies of the Department provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

After receipt of a notice of termination, and except as otherwise directed by the contracting officer, the contractor shall:

- Stop work under the agreement on the date and to the extent specified in the notice;

- Place no further orders or subcontracts for materials, services or facilities except as necessary to complete such portion of the work not terminated;
- Assign to the Department, in the manner, at the times, and to the extent directed by the contracting officer, all of the rights, titles, and interest of the contractor under the orders and subcontracts in which case the Department has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the contracting officer to the extent he/she may require, which approval or ratification shall be final for all the purposes of this clause;
- Transfer title to the Department and deliver, in the manner, at the times and to the extent as directed by the contracting officer, any property which, if the contract had been completed, would have been required to be furnished to the Department;
- Complete performance of such part of the work not terminated by the contracting officer; and,
- Take such action as may be necessary or as the contracting officer may direct, for the protection and preservation of the property related to this agreement that is in the possession of the contractor and in which the Department has or may acquire an interest.

TREATMENT OF ASSETS

- Title to all property financed or furnished by the Department shall remain in the Department. Title to all property purchased by the contractor, for which the contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Department upon delivery of such property to the contractor. Title to other property, the cost of which is reimbursable to the contractor under the contract, shall pass to and vest in the Department upon (i) issuance for use of such property in the performance of this contract or (ii) commencement of use of such property in the performance of this contract or (iii) reimbursement of the cost thereof by the Department in whole or in part, whichever first occurs.
- Any property of the Department furnished to the contractor shall, unless otherwise provided herein or approved by the Department, be used only for the performance of this contract.
- The contractor shall be responsible for any loss or damage to property of the Department that results from the negligence of the contractor or that results from the failure on the part of the contractor to maintain and administer that property in accordance with sound management practices.
- If any department property is lost, destroyed or damaged, the contractor shall notify the Department and shall take all reasonable steps to protect the property from further damage.
- The contractor shall surrender to the Department all property of the Department prior to settlement upon completion, termination or cancellation of this agreement.
- All reference to the contractor under this clause shall include contractor's employees, agents or subcontractors.

WAIVER OF DEFAULT - Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Waiver shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the contracting officer of the Department.

APPENDIX D

BUSINESS ASSOCIATE ADDENDUM

This Addendum is entered into by and between _____ [insert name of your agency] and _____ [insert the name of the entity you are contracting with], and is effective _____. This Addendum is incorporated by reference into the following Agreement (s) that are in effect between the parties. _____ [LIST AGREEMENT(S) THE ADDENDUM APPLIES TO].

1. **Purpose.** The purpose of the Addendum is to ensure that the parties are in compliance with Washington State laws and regulations, and Federal laws and regulations (hereinafter collectively referred to as “state and federal law”). In the event of a conflict between any of the Agreement(s) to which this Addendum applies, the language and intent of this Addendum controls the interpretation between the parties.
2. **Identity of the Parties.** _____ is a covered entity for purposes of this Addendum, as defined at 45 CFR Section 160.103. _____ is a business associate for purposes of this Addendum, as defined at 45 CFR Section 160.103. Covered Entity and Business Associate agree to comply with this Addendum, state and federal law.
3. **Scope of the Business Associate Relationship.** The parties have a business associate relationship because the Business Associate performs or assists in the performance of an activity on behalf of the covered entity that involves the use or disclosure of protected health information (PHI).

PHI is defined at 45 CFR 164.501, and means individually identifiable health information that is transmitted by electronic media, maintained in any medium constituting electronic media or transmitted or maintained in any other form or medium. Protected health information does not include education records covered by the Family Educational Right and Privacy Act, as amended, 20 USCA 1232g(a)(4)(B)(iv).

Individually identifiable health information is defined at 45 CFR 160.103. Individually identifiable health information includes demographic information collected from an individual, and is information created or received by a health care provider, health plan, employer or health care clearinghouse related to the past, present or future physical or mental health or condition of an individual that identifies the individual or regarding which information there is a reasonable basis to believe that the information can be used to identify the individual.

The activity(ies) the Business Associate is performing or assisting in the performance consists of the following: (CHECK ALL THAT APPLY)

- | | | |
|--|--|--|
| <input type="checkbox"/> Claims Processing or Administration | <input type="checkbox"/> Practice Management | <input type="checkbox"/> Management Services |
| <input type="checkbox"/> Data Analysis, Processing or Administration | <input type="checkbox"/> Repricing | <input type="checkbox"/> Administrative Services |
| <input type="checkbox"/> Utilization Review | <input type="checkbox"/> Legal Services | <input type="checkbox"/> Accreditation |
| <input type="checkbox"/> Quality Assurance | <input type="checkbox"/> Actuarial Services | <input type="checkbox"/> Financial Services |
| <input type="checkbox"/> Billing | <input type="checkbox"/> Accounting Services | |
| <input type="checkbox"/> Benefit Management | <input type="checkbox"/> Consulting Services | |
| | <input type="checkbox"/> Data Aggregation | |

☐ Other: _____ [IDENTIFY SPECIFIC ACTIVITY OR ACTIVITIES].

All activities, which the Business Associate actually performs in relation to this agreement, must be conducted in compliance with the Health Information Portability and Accountability Act (HIPAA), as codified at 42 USCA 1320d-d8, and regulations enacted pursuant to its provisions, even in the event that one of the above-listed activities has not been checked.

4. **Permitted and Required Uses or Disclosures of Protected Health Information.** The Business Associate is limited to the following permitted and required uses or disclosures of the protected health information with which it comes into contact:
- a) **Electronic transmission.** If PHI is transmitted between the Business Associate and the Covered Entity or between the Business Associate and other entities, the Business Associate shall implement all appropriate safeguards to prevent the use or disclosure of PHI in violation of state and federal law, including any regulations governing security of electronic data and electronic data interchange.
 - b) **Use or Disclosure of Protected Health Information.** The Business Associate's permitted use or disclosure of PHI shall not be greater than the rights of the Covered Entity to use or disclose such information. If the Covered Entity has agreed to specific restrictions on the use and disclosure of an individual's PHI, has agreed to amend an individual's record or has received a revocation of the authorization for use or disclosure, the Business Associate shall comply with such restriction, amendment or revocation upon request of the Covered Entity.

For purposes of this Agreement, the term "use" includes the sharing, employment, application, utilization, examination, analysis, canonization or commingling of protected health information with other information. "Disclosure" means the release, transfer, provision of access to or divulging in any other manner information outside the entity holding the information.

Business Associate shall not use or disclose the PHI received from or created for, the Covered Entity in any manner that would constitute a violation of state or federal law. The Business Associate may only use or disclose PHI for the purpose of accomplishing services to or on behalf of, the Covered Entity. Notwithstanding the foregoing, Business Associate may use PHI for the proper management and administration of Business Associate and to carry out its legal responsibilities.

5. **Report of Unauthorized Use or Disclosures of Protected Health Information.** The Business Associate shall report in writing all unauthorized uses or disclosures of PHI to the Covered Entity within five (5) working days of becoming aware of the unauthorized use or disclosure of such information by the Business Associate, its officers, directors, employees, contractors, agents or by a third party. Business Associate further agrees to mitigate, to the extent practicable, any harmful effect that is foreseeable to the Business Associate of a known use or disclosure of Protected Health Information by Business Associate in violation of this Agreement.
6. **Contact Persons for Notice or Other Communications.** For purposes of notice or other communication, the parties designate the following individuals, to be contacted at the listed address and/or telephone number:

COVERED ENTITY:

BUSINESS ASSOCIATE:

7. **Third Party Agreements.** Business Associate shall enter into a written agreement with any third party, who will have access to PHI that is received or created on behalf of the Covered Entity.

APPENDIX D

The agreement shall require the third party to comply with the same restrictions, terms and conditions applicable to the Business Associate pursuant to the requirements of this Addendum.

Business Associate shall require such third parties to provide immediate notice of any breach or unauthorized use or disclosure of protected health information to Business Associate, and shall take immediate steps to cure such breach. If the breach cannot be cured, Business Associate shall immediately terminate the agreement or subcontract with the third party.

8. **Accounting of Disclosures.** Business Associate shall respond to Covered Entity's request for an accounting of disclosures of protected health information, as required by 45 CFR 164.504 and 164.528, within ten working days of receiving such request from Covered Entity. Business Associate shall provide to the Covered Entity the following information:

- Date of disclosure;
- Name of the entity or person who received the PHI, and if known, the address of the person or entity;
- Brief description of PHI disclosed; and
- Brief statement of the purpose of such disclosure.

Business Associate shall not deny individual's request for an accounting of the individual's PHI. Response to any requests for accounting will be the responsibility of Covered Entity.

9. **Consent to Audit.** Business Associate shall make its records, books, documents, electronic data and all other business information available to the Secretary of the U. S. Department of Health and Human Services, the Office of the Inspector General, the Office of Civil Rights or to Covered Entity for review to confirm compliance with this Agreement and with federal and state law. If the Business Associate fails to comply with this provision, the Covered Entity, in its sole discretion, may immediately terminate this Agreement. Termination of this Agreement does not relieve Business Associate of the obligation to provide access to its records and other information as requested pursuant to federal law, to the same extent Covered Entity is required to make such records and information available.

10. **Immediate Termination.** Covered Entity may immediately terminate the Agreement to which this Addendum applies, without liability, if it determines that Business Associate has violated a provision of the Agreement and that the breach may not successfully be cured or otherwise remedied or if Business Associate or any of its employees, officers or directors is excluded, barred or otherwise prevented from participating in any government health care program, including but not limited to Medicare, Medicaid, CHAMPUS or Tricare or if Business Associate or any of its employees, officers or directors are named as a defendant or convicted in a criminal proceeding for violation of state or federal privacy and/or confidentiality laws. Notice of termination shall be in writing to the Contact person identified in paragraph 6 of this Addendum.

11. **Access to Information.** Within five (5) working days of a request by a Covered Entity for access to PHI about an individual contained in a Designated Record Set (as defined in 45 CFR 164.501), Business Associate shall make available to Covered Entity such PHI, in accordance with 45 CFR 164.504 and 164.524, for so long as the information is maintained in the Designated Record Set. If any individual requests access to PHI directly from Business Associate, Business Associate shall within two (2) working days forward such request to the Covered Entity. Business Associate shall not deny individual's request for access to the individual's PHI. Any denials of access to PHI requested will be the responsibility of Covered Entity.

12. **Availability of PHI for Amendment.** Within ten (10) working days of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in

a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as directed by the Covered Entity. Business Associate shall refer any individual's request for amendment to the Covered Entity. The Covered Entity is responsible for responding to the individual's request.

13. **Return or Destruction of Information.** At the termination of the Agreement, Business Associate shall return or destroy all PHI received from or created or received on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of PHI. If Business Associate determines that return or destruction is not feasible, Business Associate shall notify Covered Entity in writing of the reasons why return or destruction is not feasible. If destruction or return is not feasible, Business Associate shall not use or disclose PHI in any manner other than those permitted or required by state and federal laws or for the purposes described herein.
14. **Ongoing Duty to Protect Information.** Business Associate shall continue to protect individually identifiable health information from unauthorized disclosure in accordance with the terms and conditions of this Addendum and the requirements of state and federal law, for as long as the information is within its possession and control, even after the termination of this Agreement.
15. **Satisfactory Assurance of Compliance with this Addendum.** The relationship between Covered Entity and Business Associate is required by 45 CFR 164.502(e) to include satisfactory assurance that Business Associate will appropriately safeguard protected health information in conformance with HIPAA. Business Associate shall maintain or implement policies and procedures to ensure maintenance of the PHI consistent with the requirements of state and federal law.

If Covered Entity determines that it does not have satisfactory assurance of Business Associate's intent and agreement to comply with the terms and conditions of this Addendum, Covered Entity may immediately terminate its Agreement with Business Associate by providing written notice of the same.

The persons signing below, who warrant that they have the authority to execute the contract, execute THIS ADDENDUM, consisting of _____ pages.

[CONTRACTOR'S NAME]

[DEPARTMENT NAME]

Signature

Signature

Title

Date

Title

Date

APPROVED AS TO FORM:

Assistant Attorney General

Date

- NOTES:**
1. *The signature blocks on the contract must not appear on a page by themselves. Some of the text of the contract should be included at the top of the page.*
 2. *Approval as to form is not required on every contract, once the contract format has been approved by the Attorney General's Office.*

Appendix E

How to Procure an Audit

- If contract managers need to procure an audit, this information may be helpful in that process.

How to Procure an Audit

When necessary, contractors typically select and hire auditors to audit their programs. Contract managers may want to be aware of factors to consider when assisting a contractor with selecting an auditor. A sound procurement process should consider these selection criteria:

- Responsiveness of the bidder to the request for proposals;
- Past experience of the bidder;
- Availability of bidder staff with professional qualifications and technical abilities;
- Results of the bidder's external quality control reviews; and
- Price.

To comply with OMB Circular A-133, which governs audits of expenditures of federal funds, a government entity must consider audit quality factors in addition to the above factors.

Steps to consider when procuring an audit:

1. **Planning:** Define the entity to be audited, the scope of the audit, and determine specific audit requirements. Decide on the appropriate audit standards and how to evaluate prospective auditors, identifying attributes necessary in an auditor.
2. **Soliciting Proposals/Communicating Audit Requirements:** A written proposal to solicit bids should be clearly written, set forth all terms, conditions and evaluation criteria as well as the scope of work required. Encourage full and open competition.
3. **Selecting a Qualified Auditor:** Screen bidders for minimum standards, and then evaluate both the technical criteria and the price proposals.
4. **Writing the Agreement/Documenting Expectations:** Both parties should agree in writing on important audit related matters. The written contract should clearly specify the audit scope, objective and purpose; deadlines for work to be performed; audit cost; report format; type and timing of support to be provided to the auditor by the entity; and professional auditing standards to be followed in performing the audit.
5. **Monitoring the Audit to Ensure a Quality Audit:** Monitoring the progress of the audit is the most effective way to ensure receiving both the type and quality of audit service specified in the contract.

Further information on this issue can be found in OMB Circular A-133 at <http://www.whitehouse.gov/OMB/circulars>.

Another source of information is the guide "Choosing an External Auditor" found at http://www.auditforum.org/mid_america/midam_exauditor.htm.

Additionally, the Department of General Administration, Office of State procurement, has awarded master personal service contracts for auditing services. State agency staff can use these contracts by conducting a second tier competition to select the auditing contractor. Be sure to check your own agency internal policy about using these contracts. Further information can be found at <http://www.ga.wa.gov/pca/Ps2/>.

Appendix F

Types of Audits

- This information is designed to give brief descriptions of various audit types state agency staff may deal with in the contracting process.

TYPES OF AUDITS

Financial Audits

Non-Governmental Entities

Financial audits of non-governmental entities are performed under Generally Accepted Auditing Standards (GAAS), published by the American Institute of Certified Public Accountants (AICPA). The auditor gains an understanding of internal controls affecting the fair presentation of the financial statements and performs tests to verify amounts presented which could affect decisions made by financial statement users. The audit results in an opinion on the fair presentation of the financial statements.

Governmental Entities

Financial audits of governmental entities are also performed under Generally Accepted Auditing Standards (GAAS), published by the American Institute of Certified Public Accountants (AICPA), and Governmental Auditing Standards (GAS) issued by the Comptroller General of the United States. In addition to the procedures performed under a GAAS audit, the auditor gains an understanding of internal controls affecting compliance with laws and regulations and performs tests to determine the entity's compliance with the applicable laws and regulations. The audit results in an opinion on the fair presentation of the financial statements, an opinion on the entity's internal controls over the financial statements, and a report on its compliance with laws and regulations that are material to the financial statements.

Service Organization Internal Control Audits

Service organization internal control audit means an audit of an organization that provides services to an entity, when such services affect how the entity's transactions are initiated, recorded, processed or reported. An example is an electronic data processing center that processes transactions and related data for other businesses. When a contractor has these services provided by another organization, the state agency may consider obtaining an audit of the other organization. The AICPA requires these audits when the transactions are material to the financial statements.

When services that affect how the Agency's transactions are initiated, recorded, processed or reported are obtained from another organization, state agencies may hire an independent auditor to review the other organization's internal controls.

Compliance Audits

Single Audits of Governmental and Non-Governmental Entities

Single Audits are performed under Circular A-133, published by the U.S. Office of Management and Budget. A Single Audit is an audit of both the entity's financial statements and the federal awards to the entity.

A single audit determines whether the entity is in compliance with the laws and regulations of the federal awards to the entity, as well as with the provisions of the federal award contracts or grant agreements that could affect the financial statements.

The audit results in an opinion on the fair presentation of the financial statements, an opinion on the fair presentation of the schedule of expenditures of Federal awards in relation to the financial statements taken as a whole, a report on internal control related to the financial statements and major programs, and a report on compliance with laws, regulations, and the provisions of contracts or grant agreements where noncompliance with such laws, regulations or contract or grant agreement provisions could have a material effect on the financial statements.

APPENDIX F

Program Specific Audits

Under OMB Circular A-133, a program specific audit means an audit of one Federal program. When a contractor is subject to a Single Audit but expends Federal awards under only one Federal program, and the Federal program's laws, regulations or grant agreements do not require a financial statement audit of the contractor, then the contractor may elect to have a program-specific audit. In this case, the audit would be done of only the financial statements related to the specific program and the contractor's compliance with the programs laws and regulations.

Federal Program Audits and Federal Monitoring Reviews

Under OMB Circular A-133, federal agencies retain the right to conduct or arrange for additional audits. These audits generally focus on how well the contractor achieves program objectives and complies with requirements specific to the program. These audits may or may not include a review of the fiscal aspects of the program and administrative capability of the entity.

Regulatory Audits

A regulatory audit means an audit done for the purpose of determining a contractor's compliance with specific regulations, statutes or reporting requirements. Regulatory audits may be required by either the Federal government or by State statute.

Special Purpose Audits

Program or Performance Audits

Performance audits are generally done as either economy and efficiency audits or program audits. Economy and efficiency audits include determining whether the entity is acquiring, protecting, and using its resources economically and efficiently, what the causes are of inefficiencies or uneconomical practices, and whether the entity has complied with laws and regulations concerning matters of economy and efficiency. Program audits include determining the extent to which the desired results or benefits established by the legislature or other authorizing body is being achieved, the effectiveness of organizations, programs, activities or functions, and whether the entity is complying with requirements of laws and regulations applicable to the program.

Where these audits are done of state agencies, they are generally specified in legislation or budget provisos. Performance audits of state agencies are usually done by the Joint Legislative Audit and Review Committee (JLARC).

In addition to performance or program audits, JLARC may perform sunset reviews of legislation. If a state agency wants to obtain a performance audit of a client service contractor, this should be specified in the client service contract.

Limited Scope and Agreed-Upon Procedures Audits

A limited scope audit is one in which the scope of the audit is limited, either by agreement of the state agency and the contractor or by the contractor limiting the auditor's access to records or not having sufficient records to audit or by lack of independence of the auditor. An agreed-upon procedures audit is a limited scope audit where the specific audit procedures for the audit of the contractor are agreed to by the state agency and the contractor, and are defined in the contract with the auditor.

Appendix G

Examples of Contract Documentation Forms

- **Contract Documentation Checklist - Pages G-1 through G-3**
 - The purpose of this form is to provide a checklist to remind contract managers of the contracting process steps.
- **Contract Documentation Form - Pages G-4 through G-6**
 - The purpose of this document is to provide a means of documenting the contracting process.
- **Planning and Risk Assessment Form - Pages G-7 through G-10**
 - The staff at the Office of the Superintendent of Public Instruction uses this form.

Contract Documentation Checklist

Contract Number: _____

Contractor Name: _____

Contract Manager: _____

What services are being contracted?

Do state agency personnel typically perform them? Yes ☐ No ☐

What type of contract is this?

- ☐ Client Service
- ☐ Personal Service

Document the following pre-contract decisions:

- ☐ Funding Availability
- ☐ Type of Appropriation
- ☐ Cost/Benefit Analysis
- ☐ Available Public Resources
- ☐ Legal Constraints to Contracting
- ☐ Contracting with Current or Former State Employees
- ☐ Independent Contractor Relationship
- ☐ Fiscal Considerations (appropriate method of compensation and billing)
- ☐ Federally Funded Contracts (subrecipient or vendor)
- ☐ Audits (evaluate coverage provided by existing and anticipated audits)

Contractor Selection and Screening

- ☐ Competitive procurement process was used?
- ☐ Were procedures sufficient to obtain an adequate number of responses?
- ☐ How broadly was the solicitation for proposals advertised?
- ☐ Were OMWBE firms afforded the maximum practical opportunity in the specific procurement?

Were appropriate contractor screening criteria and methods used? Consider the following contractor standards:

- ☐ Appropriate experience, staffing, technical qualifications, and facilities;
- ☐ Able to comply with the proposed or required time of delivery or performance schedule;
- ☐ Adequate administrative and financial capability for performance;
- ☐ Satisfactory record of integrity, judgment, and performance;
- ☐ Otherwise qualified and eligible to receive a contract under applicable laws and regulations;
- ☐ Provided evidence of the appropriate licenses, registrations and certifications that would apply to the specific contracted services;
- ☐ Non-competitive process was used?
- ☐ Explain reasons for selecting contractor(s);
- ☐ Sole source selection method was used?
- ☐ Explain reasons for selecting contractor(s).

Risk Assessment and Monitoring Plan

- ☐ Were program and contractor risks assessed prior to entering into a contract?
- ☐ Does the risk assessment form the basis of the monitoring plan?
- ☐ Was the risk assessment used to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight?

Contract Provisions

Specifically review the contract for the following items:

- ☐ Is the scope of work clearly written and defined?
- ☐ Are amendments made in writing and executed prior to the expiration of the original contract?
- ☐ Are performance measures required and do they satisfy statutorily mandated outcomes?
- ☐ Are hold harmless and indemnification provisions included?
- ☐ Are liability and industrial insurance provisions adequate?

- ☐ Are remedies and sanctions provisions appropriate to safeguard the state's interests?
- ☐ Do contract termination provisions protect the state's rights?
- ☐ Was an appropriate compensation method selected and identified in the contract?
- ☐ Is coordination with other agencies an issue?

Technical Assistance

- ☐ Will this contractor need technical assistance? What are the indicators?
- ☐ How will technical assistance be provided to the contractor?

Monitoring

- ☐ Is there a monitoring plan in place? What monitoring activities are listed in your plan?
- ☐ If corrective action is needed, is there a corrective action form your agency uses?
- ☐ If criminal activity is suspected, was it reported?

Post-Contract Follow up

- ☐ Any activities need follow up?
- ☐ All invoices have been received and paid?
- ☐ Follow up on audit findings needed?
- ☐ Program objectives and outcomes have been evaluated/assessed?
- ☐

Audits

- ☐ Have audits been completed on this provider?
- ☐ What audit coverage is necessary to assure appropriate spending of state funds?
- ☐ Was a risk assessment completed to determine whether an audit is needed?
- ☐ Is corrective action necessary? Were questioned costs and audit findings resolved?

Contract Documentation Form

Contracting Activity	Comments
Contract Number: Contractor Name: Contract Manager:	
Pre-Contract Considerations	
Document the types of services being contracted. Are the services performed by state agency personnel?	
What type of contract is this? (Client Service, Personal Service)	
Document the following pre-contract decisions.	
▪ Funding Availability	
▪ Type of Appropriation	
▪ Cost/Benefit Analysis	
▪ Available Public Resources	
▪ Legal Constraints to Contracting	
▪ Contracting with Current or Former State Employees	
▪ Independent Contractor Relationship	
▪ Fiscal Considerations (appropriate method of compensation and billing)	
▪ Federally Funded Contracts (subrecipient or vendor)	
▪ Audits (evaluate coverage provided by existing and anticipated audits)	
Contractor Selection and Screening	
Document the decision to use a competitive procurement process or whether a non-competitive, sole source selection method was used.	
For competitive process, were procedures sufficient to obtain an adequate number of responses? How broadly was the solicitation for proposals advertised?	
Were OMWBE firms afforded the maximum practical opportunity in the specific procurement?	
Were appropriate contractor-screening criteria and methods used? Consider the following contractor standards:	
▪ Appropriate experience, staffing, technical qualifications, and facilities.	
▪ Able to comply with the proposed or required time of delivery or performance schedule.	
▪ Adequate administrative and financial capability for performance.	

Contracting Activity	Comments
<ul style="list-style-type: none"> Satisfactory record of integrity, judgment, and performance. 	
<ul style="list-style-type: none"> Otherwise qualified and eligible to receive a contract under applicable laws and regulations. 	
<ul style="list-style-type: none"> Provided evidence of the appropriate licenses, registrations and certifications that would apply to the specific contracted services. 	
Risk Assessment and Monitoring Plan	
Were the program and contractor risks assessed prior to entering into a contract? The assessment should form the basis of the monitoring plan.	
Was the risk assessment used as the basis to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight?	
Contract Provisions	
Specifically review the contract for the following items:	
<ul style="list-style-type: none"> Is the scope of work clearly written and defined? 	
<ul style="list-style-type: none"> Are amendments made in writing and executed prior to the expiration of the original contract? 	
<ul style="list-style-type: none"> Are performance measures required and do they satisfy statutorily mandated outcomes? 	
<ul style="list-style-type: none"> Are hold harmless and indemnification provisions included? 	
<ul style="list-style-type: none"> Are liability and industrial insurance provisions adequate? 	
<ul style="list-style-type: none"> Are remedies and sanctions provisions appropriate to safeguard the state's interests? 	
<ul style="list-style-type: none"> Do contract termination provisions protect the state's rights? 	
<ul style="list-style-type: none"> Was an appropriate compensation method selected and identified in the contract? 	
<ul style="list-style-type: none"> Does the contract specify that payment will not be made for the same or similar services for the same client more than once (no duplicate payments)? 	
Technical Assistance	
Will this contractor need technical assistance? What are the indicators?	
How will technical assistance be provided to the contractor?	

APPENDIX G

Contracting Activity	Comments
Monitoring	
Is there a monitoring plan in place? What monitoring activities are listed in your plan?	
If corrective action is needed, is there a corrective action form your agency uses?	
If criminal activity is suspected, was it reported?	
Post-Contract Follow-up Procedures	
Any activities need follow up?	
All invoices have been received and paid?	
Follow up on audit findings needed?	
Program objectives and outcomes have been evaluated/assessed?	
Audits	
Have audits been completed on this provider?	
What audit coverage is necessary to assure appropriate spending of state funds?	
Was a risk assessment completed to determine whether an audit is needed?	
Is corrective action necessary? Were questions costs resolved?	
Are audit findings resolved?	

PLANNING AND RISK ASSESSMENT FORM

This form must be completed for all Client Service contracts. A copy of this form should accompany the original contract through the contract approval process and should be filed with the executed contract. The contract designee should maintain the original in their contract file for risk assessment updates and revisions as necessary, as well as monitoring and post-contract evaluation. The final Planning and Risk Assessment must be sent to contracts administrator after contract is complete.

CONTRACTOR NAME: _____

CONTRACT DESIGNEE: _____

Has contract designee completed contract training? ☐ **Yes** ☐ **No**

CONTRACT NUMBER: _____

(Contract No. is provided by the contracts administrator)

PRE-CONTRACT PLANNING

1. Document the type of services being contracted:

2. Document the following pre-contract decisions:

Decision	Comments
Funding availability (include MIC)?	
Type of appropriation (state, federal, private)?	
Have you performed a cost/benefit analysis?	
Available public resources?	
▪ Agency resources	
▪ Other public resources	
Any legal constraints to contracting?	
Is contractor a current or former state employee?	
▪ If current, does contractor require Ethics Board approval?	
▪ If former, provide last date of employment.	
Does an independent contractor relationship exist?	
Have you determined the appropriate method(s) of compensation and billing? Explain. <input type="checkbox"/> Cost Reimbursement (Budget) <input type="checkbox"/> Time and materials (Hourly) <input type="checkbox"/> Fixed Price <input type="checkbox"/> Performance-based (valuation of deliverables)	
Federally funded contracts - subrecipient or vendor?	
Are audits required? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, evaluate coverage provided by existing and anticipated audits.	

CONTRACTOR SELECTION AND SCREENING

1. What was the process used to select this contractor?

☐ Competitive ☐ Sole Source

2. If competitive, describe the process used.

☐ Formal (>\$20,000) ☐ Informal (<\$20,000)

3. Please document where competitive documentation (proposals, proof of advertisement, etc.) will be maintained.

4. If sole source, describe why competition was not appropriate. Explain reasons for selecting contractor.

5. Advertised? ☐ Yes ☐ No ☐ N/A (less than \$20,000)

If yes, where and when was the advertisement placed?

Do you have proof of advertisement (tear sheet and affidavit)? ☐ Yes ☐ No

6. Does the contractor require accreditation and licensure? ☐ Yes ☐ No

If yes, have you received proof from contractor? ☐ Yes ☐ No

RISK ASSESSMENT

Please respond to the following questions with regards to the risks associated with this contract.
Risk inherent in a contractor's potential performance is dynamic and should be updated periodically throughout the term of the contract. Not required on contracts less than \$5,000.

<u>Risk Point(s)</u>	<u>Risk Factor</u>
0 =	Factor is not applicable
1 - 2 =	Low Risk
3 =	Medium Risk
4 - 5 =	High Risk
5 =	Unknown Risk Factor

1. Program or Contract Risk

Risk Factor	Risk Points
Contract monitoring is required by law or regulation (such as Single Audit Act)	
Program history (new or established program?)	
Contract dollar amount \$5,000 to <\$25,000 = Low Risk >\$25,000 to <\$100,000 = Medium Risk >\$100,000 = High Risk	
Total funding (does the contract represent an significant portion of the total program funding?)	
Program complexity (are program requirements simple or complex?)	
Client health and safety (who is the direct client and how vulnerable are they?)	
Payment method (how complex is it?) What method(s) did you use? What experience do you have with the method(s)? <input type="checkbox"/> Cost Reimbursement (Budget) (score 3-5) <input type="checkbox"/> Time and materials (Hourly) (score 3-5) <input type="checkbox"/> Fixed Price (score 1-3)) <input type="checkbox"/> Performance-based (valuation of deliverables) (score 1-3)	
Procurement method: <input type="checkbox"/> Competitive (score 1 to 3) <input type="checkbox"/> Sole Source (score 3 to 5)	

2. Contractor Risk

Risk Factor	Risk Points
Total funding the contractor receives from the agency	
Number of contracts with State (is the contractor receiving funding from several sources for similar services?)	
Collaboration (is their collaboration with any of the other state funding partners?)	
Length of time in business	
Experience and past performance	
Accreditation and licensure (Is contractor subject to either and if so, do you have proof?)	
Financial health and practices (is contractor's financial condition good or poor?)	
Current and prior audit experience (has the contractor had weaknesses in internal control with federal or state programs?)	
Monitoring exercised by other funding agencies (has there been monitoring, etc., by other agencies that could indicate the degree of risk?)	
Board of Directors (for Non-profits only - do they take an active role in the organization?)	
Subcontracting activities (does the contractor have an effective monitoring function to oversee subcontractors?)	
Organizational changes (is organization stable or does it have frequent turnover?)	
Management structure and adequacy (Is organization centralized or decentralized - how much control over decentralized functions?)	
Legal actions (has there been any for the last 12 months? - if so, what?)	
Background of individuals (do you have resumes?)	

CONTRACT MONITORING

Monitoring means any planned, ongoing or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. The level of monitoring should be based on a risk assessment of the contractor's role in delivering services and the contractor's ability to deliver under the terms of the contract.

1. Were contract and contractor risks assessed prior to entering into a contract?

☐ Yes ☐ No

2. Does the risk assessment form the basis of the monitoring plan?

☐ Yes ☐ No

3. Was the risk assessment used to determine the scope, frequency, and methods of monitoring and/or auditing to be used to ensure sufficient oversight? ☐ Yes ☐ No
4. What monitoring activities are in your plan?

Monitoring Activities	Comments
Review of entity periodic reports	
Review of entity invoices and other documentation	
Conduct onsite reviews or other observations (meetings, etc.)	
Maintain other periodic contact with contractor (telephone, email, etc.)	

TECHNICAL ASSISTANCE

1. Will this contractor need technical assistance? ☐ Yes ☐ No
If yes, what are the indicators?

2. How will technical assistance be provided to this contractor?

AUDITS

Issue	Comments
Have audits been completed on this contract (for example, A133 audits)?	
What, if any, audit coverage is necessary to assure appropriate spending of state funds?	
Was a risk assessment completed to determine whether an audit was needed?	
Is corrective action necessary? Were questioned costs resolved?	
Are audit findings, if any, resolved?	

POST-CONTRACT FOLLOW-UP PROCEDURES

Issue	Comment
Any activities need follow-up?	
All invoices have been received and paid?	
Follow-up on audit findings needed?	
Program objectives and outcomes have been evaluated/assessed? Please describe.	

Provide evaluation of contractor performance:

Final must be submitted to Contracts Administrator.

Appendix H

Example of Risk/Monitoring Plan

- This document provides an example of a tool that links risk factors and monitoring activities.

RISK MONITORING PLAN EXAMPLE	
IDENTIFIED RISKS	RESPONSE TO IDENTIFIED RISKS
Risks associated with <u>CLIENT SERVICE</u> programs: Examples of factors that may be considered in assessing risk include:	Possible Action Steps in a Monitoring Plan
Total funding – Does this contract represent a significant portion of the total program funding?	<ul style="list-style-type: none"> Assess contractor budget controls. Monitor remaining available budget when conducting invoice reviews.
Complexity – Are program requirements simple or complex?	<ul style="list-style-type: none"> If complex, determine whether agency staff and contractor staff maintain sufficient understanding of the rules. May expand planned technical assistance.
Client health and safety – How vulnerable are the clients served by the program?	Include client service quality control monitoring methods into contract.
Program history – Is it a new or long established program or service? Have any significant changes occurred?	<ul style="list-style-type: none"> If new, determine whether agency staff and contractor staff maintain sufficient understanding of the rules. May expand planned technical assistance.
Responsibility for key decisions – Does the state agency, federal government or the contractor make decisions about eligibility and amount or type of service to be provided to a client? For federal funds, is the contractor a vendor or subrecipient?	<ul style="list-style-type: none"> If subrecipient makes eligibility and/or service level determination for clients, review eligibility system reliability in an early program or fiscal on-site monitoring program. Pay attention to federal rules regarding subrecipient monitoring and auditing
Federal risk assessment – Has the U.S. General Accounting Office and U.S. Office of Management and Budget identified the program as being high risk?	If yes, understand the reasons for the high-risk label and address in monitoring plan.
Payment method – What type of payment method is used (e.g., cost reimbursement, fee for service, performance-based)? What experience does the state agency have with the method?	Monitoring plan will depend on type of payment method. If agency is new to compensation method, determine how other agencies monitor payments under this type of payment method.
Monitoring methods – Are the existing methods of monitoring effective for this program? Do these monitoring methods effectively mitigate the other types of possible risks?	Determine whether additional monitoring actions are necessary.
Competition – Are contracts awarded on a competitive basis, which includes detailed evaluations of the service proposal, costs, and contractor qualifications or are they awarded on a noncompetitive basis?	If not competitively bid, use alternative methods to determine that service quality and price are appropriate.

RISK MONITORING PLAN EXAMPLE	
IDENTIFIED RISKS	RESPONSE TO IDENTIFIED RISKS
Risks associated with <u>CLIENT SERVICE</u> contractors: Examples of factors that may be considered in assessing risk include:	
Total funding that the contractor receives from the agency – Is the amount of funding small or large? Does the contractor have many or few contracts with the state?	Determine whether contract amount is large and whether the contractor has other state contracts. Analyze contractor's fiscal systems to ensure proper accounting of funds.
Multiple funding sources – Is the contractor receiving funding from several sources for similar services? Are multiple funding sources involved and to what extent?	Identify other state contracts and program managers. Discuss services with other program managers to determine risk of multiple payments for same or similar services.
Collaboration – Has the contractor promoted collaboration on service delivery and contract expectations between itself and all of its funding partners?	If not, determine with other funding partners whether funding is duplicative.
Length of time in business – Has the contractor been in business for several years or is it a start-up client service provider?	<ul style="list-style-type: none"> • If new business, obtain resumes of key service providers to documents sufficiency of qualifications. • Obtain and review fiscal capacity of contractor.
Experience and past performance – Does the contractor have contracts for similar services with other governmental entities? How extensive is the contractor's experience with the state for this type of service? What is their performance history? Have there been changes in key staff?	Document experience and status of key staff. If performance history is poor, determine whether an alternative contractor would be appropriate. If not, plan on additional technical assistance to contractor and more frequent on-site monitoring.
Accreditation/licensure – Are contractors subject to accreditation or licensure requirements?	Obtain documentation of requirements prior to contract execution.
Financial health and practices – Is the contractor's financial condition good or poor? Does the contractor demonstrate sound financial practices? Is the contractor's financial record keeping system adequate for the number and complexity of funding sources being managed? Does the contractor do business with related parties and, if yes, does this business affect agency funds?	<ul style="list-style-type: none"> • Obtain sufficient financial information to conclude on condition, complexity, etc. • May need additional monitoring if financial health is poor.
Current and prior audit experience – Has the contractor had weaknesses in internal control over federal or state programs?	<ul style="list-style-type: none"> • If yes, plan on additional technical assistance and more frequent monitoring. • Consider additional performance reports when approving invoices.

RISK MONITORING PLAN EXAMPLE	
IDENTIFIED RISKS	RESPONSE TO IDENTIFIED RISKS
Oversight exercised by funding agencies - Have there been monitoring or other reviews by any funding agency that could indicate the degree of risk? Waivers – Is the contractor proposing to operate under a waiver from customary program and financial management requirements?	Coordinate monitoring plan with other agencies.
Board of directors – If the contractor is a nonprofit organization, does the board take an active role in directing the organization, establishing management policies and procedures, and monitoring the organization's financial and programmatic performance? Is the board comprised of individuals who are unrelated? Do employees or ex-employees of the organization serve as board members?	Determine the possible impact of management and policy structure on the contract.
Subcontracting – Does the contractor subcontract key activities? Does the contractor have an effective monitoring function to oversee these subcontracts?	Require this information in the competitive bid process or the pre-grant application process. Plan to provide additional technical assistance regarding appropriate monitoring expectations and systems.
Organizational changes – Has there been frequent turnover of contractor management, senior accounting staff or key program personnel? Has the contractor taken on any new services within the last 12 months? Has the contractor experienced a recent rapid growth or downsizing? Has the contractor experienced reorganization within the last 12 months? Has the contractor changed major subcontractors recently?	Assess what impact these changes may have on the contract.
Management structure – Is the organization centralized or decentralized? How much control does the organization have over decentralized functions?	Determine the possible impact of management and policy structure on the contract.
Legal actions – Have any lawsuits been filed against the contractor within the last 12 months?	Determine the program and fiscal implications of pending legal actions. Require reporting of end result in a timely manner.

Glossary

GLOSSARY

ACCOUNTING SYSTEM - The methods and records established to identify, assemble, analyze, classify, record, and report the state's transactions and to maintain accountability for its assets and liabilities.

ADA - An acronym for the Americans with Disabilities Act of 1990.

AGENCY - Every state agency, office, division, board, commission, department, state institution or state institution of higher education, which includes all state universities, regional universities, The Evergreen State College, and community and technical colleges.

AMENDMENT – A formal modification or change of a material term, such as the term, cost or scope of work, in one or more provisions of an existing contract.

APPROPRIATION - A legislative authorization for an agency to make expenditures and incur obligations for specific purposes from designated resources available or estimated to be available during a specified time period.

AUDITING – The independent examination of an entity's records or actions to evaluate compliance with financial, legal, contractual or policy requirements.

BREACH OF CONTRACT – Failure, without legal reason, to comply with the terms of the contract.

CLIENT SERVICES - Services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing (RCW 39.29.006(2)).

CONTRACT – A legally binding agreement between the state and another entity, public or private, for the provision of goods or services. This includes agreements and memos of understanding.

CONTRACT MANAGEMENT - Any activity related to contracting for client services, including the decision to contract, contractor screening, contractor selection, contract preparation, contract monitoring, auditing, and post-contract follow up.

CONTRACT MANAGER – A person designated by the responsible state agency or department to manage performance of the contract.

CONTRACT MONITORING - Any planned, ongoing or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract. The level of monitoring should be based on a risk assessment of the contract role in delivering client services and the contractor's ability to deliver under the terms of the contract.

CORRECTIVE ACTION - Action taken by the contractor that corrects identified deficiencies, produces recommended improvements or demonstrates that deficiencies or findings are either invalid or do not warrant action.

DEBARMENT – Under federal contracting law, a process in which a contractor is precluded from bidding on or entering into contracts with the federal government. Federal rules also prohibit federal contractors from contracting with debarred businesses.

GLOSSARY

DEFAULT – Failure to perform an obligation under a contract.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES (GAAP) – These are the uniform minimum standards for financial accounting and reporting. They govern the form and content of the financial statements of an entity. GAAP encompass the conventions, rules, and procedures necessary to define accepted accounting practices at a particular time. They include not only broad guidelines of general application, but also detailed practices and procedures. The primary authoritative body on the application of GAAP to state and local governments is the Governmental Accounting Standards Board.

GENERALLY ACCEPTED AUDITING STANDARDS (GAAS) – These are the standards established by the AICPA for the conduct and reporting of financial audits. There are ten basic GAAS, classed into three broad categories:

- General Standards;
- Standards of Fieldwork; and
- Standards of Reporting.

The GAAS set forth the objectives of the audit and establish measures that can be applied to judge the quality of its performance.

GRANTS - A contribution or gift of cash or other assets by one governmental unit to another entity. The contribution is to be used or expended for a specific purpose, activity or facility.

HEARING – A formal proceeding, customarily public, in which evidence is presented and issues of fact or law are adjudicated.

HIPAA – Health Insurance Portability and Accountability Act of 1996 - the federal law passed in 1996 governing the transmission, disclosure, and security provided by covered entities and their business associates for protected health care information.

INDEPENDENT CONTRACTOR – A person working for an entity under contract and not an employee of the contracting entity. The contracting entity does not pay unemployment, disability or workers' compensation insurance or withhold taxes from payments to the person.

INTERLOCAL/INTERGOVERNMENTAL AGREEMENTS - Contracts between any agency, political subdivision or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

INTERNAL AUDIT - An independent appraisal activity of the diverse operations and controls within a government entity to determine whether prescribed policies and procedures are followed, established standards are met, resources are used efficiently and economically, and the organization's objectives are being achieved.

INTERNAL CONTROL - A management process for keeping an entity (agency, board, commission, department, division, institution or program) on course in achieving its organizational objectives. A management control system, including comprehensive internal controls, should provide reasonable assurance that entity objectives are being met.

MONITORING – see Contract Monitoring.

PERSONAL SERVICES - Professional or technical services provided by a consultant to accomplish a specific study, project, task or other work statement.

PROCUREMENT - The method used to select contractors for award and includes both competitive and noncompetitive methods.

PURCHASED SERVICES - Services provided by a vendor to accomplish routine, continuing and necessary functions.

RISK ASSESSMENT - The process of evaluating exposure to harm or loss that could arise from some activity associated with the client service contract. It consists of identifying and classifying risks based on certain characteristics, measuring and evaluating the consequences of these risks, and prioritizing the risks.

SAAM – State Administrative and Accounting Manual, which is published by OFM and found at the following address: <http://www.ofm.wa.gov/policy/saamintro.htm>.

SINGLE AUDIT – A financial, internal control, and compliance audit of a nonfederal entity administering federal assistance awards including the financial statements of the entity.

SUBRECIPIENT - A non-federal entity that expends federal awards received from a pass-through entity to carry out a federal program, but does not include an individual that is a beneficiary of such a program. It also excludes vendors that receive federal funds in exchange for goods and/or services in the course of normal trade or commerce.

TECHNICAL ASSISTANCE - Providing information to contractors with the goal of increasing competence or capacity in a particular area or to reduce the probability of a performance error. Technical assistance should be ongoing and proactive, but does not mean the state agency is responsible for teaching a contractor how to operate as a business. Inherent in entering into a contract is the assumption that the contractor is competent and capable of performing all of the duties specified in the contract.

VENDOR - A dealer, distributor, merchant or other seller providing goods or services required for the conduct of a federal program.

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